

MONTANA LEGISLATIVE HISTORY

Chapter 471 19 95

Bill H 521 S _____

Original bill & history T c

H. Committee on NATURAL RESOURCES

Hearing Date(s) 2/15 X c

2/17 X c

EXEC. ACTION 3/13 X c

_____ c

Date Out _____ c

S. Committee on NATURAL RESOURCES

Hearing Date(s) 3/27 X c

EXEC. ACTION 3/28 X c

_____ c

_____ c

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

2/11	FIRST READING		
2/11	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
2/13	FISCAL NOTE REQUESTED		
2/14	HEARING		
2/17	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/17	FISCAL NOTE RECEIVED		
2/17	FISCAL NOTE PRINTED		
2/18	2ND READING PASSED	90	5
2/20	3RD READING PASSED	93	7
TRANSMITTED TO SENATE			
2/21	FIRST READING		
2/21	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
3/06	HEARING		
3/08	COMMITTEE REPORT—BILL CONCURRED		
3/13	2ND READING CONCURRED	49	0
3/14	3RD READING CONCURRED	49	1
RETURNED TO HOUSE			
3/15	SIGNED BY SPEAKER		
3/18	SIGNED BY PRESIDENT		
3/20	TRANSMITTED TO GOVERNOR		
3/23	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 206		
	EFFECTIVE DATE: 10/01/95		

* HB 521 INTRODUCED BY WAGNER, ET AL.

REQUIRE CERTAIN STATE ADMINISTRATIVE AND LOCAL AGENCIES TO JUSTIFY ADOPTION OF RULES THAT ARE MORE STRINGENT THAN CORRESPONDING FEDERAL REGULATIONS

2/11	INTRODUCED		
2/11	FIRST READING		
2/11	REFERRED TO NATURAL RESOURCES		
2/13	FISCAL NOTE REQUESTED		
2/15	HEARING		
2/18	FISCAL NOTE RECEIVED		
2/20	FISCAL NOTE PRINTED		
3/15	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/21	REVISED FISCAL NOTE RECEIVED		
3/21	REVISED FISCAL NOTE PRINTED		
3/22	2ND READING PASSED	65	34
3/23	3RD READING PASSED	65	35
TRANSMITTED TO SENATE			
3/24	FIRST READING		
3/24	REFERRED TO NATURAL RESOURCES		
3/27	HEARING		
3/28	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/29	2ND READING CONCURRED AS AMENDED	31	19
3/30	3RD READING CONCURRED	35	15
RETURNED TO HOUSE WITH AMENDMENTS			
4/04	2ND READING AMENDMENTS CONCURRED	65	30
4/05	3RD READING AMENDMENTS CONCURRED	69	30
4/07	SIGNED BY SPEAKER		
4/08	SIGNED BY PRESIDENT		
4/10	TRANSMITTED TO GOVERNOR		
4/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 471		
	EFFECTIVE DATE: 04/14/95		

HB 522 INTRODUCED BY TUSS, ET AL.
REQUIRE DISABILITY INSURANCE COVERAGE FOR RESPIRATORY CARE PRACTITIONERS FOR ALL POLICIES OF DISABILITY INSURANCE

2/11	INTRODUCED		
2/11	FIRST READING		
2/11	REFERRED TO HUMAN SERVICES & AGING		
2/15	HEARING		
2/22	MISSED TRANSMITTAL DEADLINE		
	DIED IN COMMITTEE		

HB 523 INTRODUCED BY MCKEE, ET AL.
GENERALLY REVISE THE MONTANA COMMUNITY SERVICE ACT BY REQUEST OF THE GOVERNOR

2/11	INTRODUCED		
2/11	FIRST READING		
2/11	REFERRED TO STATE ADMINISTRATION		
2/13	FISCAL NOTE REQUESTED		
2/15	HEARING		
2/16	FISCAL NOTE RECEIVED		
2/16	FISCAL NOTE PRINTED		
2/23	MISSED TRANSMITTAL DEADLINE		
	DIED IN COMMITTEE		

HB 524 INTRODUCED BY MCKEE, ET AL.
REVISE POPULATION AND ECONOMIC WELL-BEING REQUIREMENTS TO QUALIFY AS A RESORT COMMUNITY

2/11	INTRODUCED		
2/11	FIRST READING		
2/11	REFERRED TO TAXATION		
2/13	FISCAL NOTE REQUESTED		
2/17	FISCAL NOTE RECEIVED		
2/18	FISCAL NOTE PRINTED		
2/21	HEARING		
3/02	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/04	TAKEN FROM 2ND READING AND REREFERRED TO TAXATION		
3/08	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/10	2ND READING PASSED	54	45
3/11	3RD READING PASSED	57	38
TRANSMITTED TO SENATE			
3/13	FIRST READING		
3/13	REFERRED TO TAXATION		
3/17	HEARING		
4/05	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/07	2ND READING CONCURRED	26	21
4/08	3RD READING CONCURRED	27	23
RETURNED TO HOUSE WITH AMENDMENTS			
4/10	2ND READING AMENDMENTS CONCURRED	65	34
4/11	3RD READING AMENDMENTS NOT CONCURRED	44	50
4/12	RECONSIDERED PREVIOUS ACTION AND PLACED BACK ON 3RD READING	64	31
4/12	3RD READING AMENDMENTS CONCURRED	59	33
4/13	SIGNED BY SPEAKER		
4/18	SIGNED BY PRESIDENT		
4/18	TRANSMITTED TO GOVERNOR		
4/26	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 554		
	EFFECTIVE DATE: 04/26/95		

INTRODUCED BY

ORR

A statement of intent is required for this bill in order to provide guidance to the board of health and

1 environmental sciences and to the department of health and environmental sciences in complying with [this
2 act].

3 The legislature intends that in addition to all requirements imposed by existing law and rules, the
4 board or the department include as part of the initial publication and all subsequent publications of a rule
5 a statement as to whether the rule in question contains any standards or requirements that exceed the
6 standards or requirements imposed by federal law.

7 If the rules are more stringent than federal law, the statement must include but is not limited to a
8 discussion of the policy reasons and a risk-cost analysis that supports the board's or department's decision
9 to impose the standards or requirements and also supports the fact that the state standards or requirements
10 to be imposed are achievable under current technology, notwithstanding the federal government's
11 determination that lesser standards or requirements are appropriate.

12 The risk-cost analysis must address the probability of harm to public health or the environment
13 under the conditions imposed by the federal standards, the reduction in that probability of harm because
14 of imposition of stricter state standards, and the costs required of the regulated community to mitigate the
15 harm to public health or the environment via the stricter state standards.

16 [This act] is intended to apply to any rule that is adopted, readopted, or amended under the
17 authority of or in order to implement, comply with, or participate in any program established under federal
18 law or under a state statute that incorporates or refers to federal law, federal standards, or federal
19 requirements under Title 75, chapter 2; Title 75, chapter 5; Title 75, chapter 6; or Title 75, chapter 10.

20
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

22
23 **NEW SECTION. Section 1. State standards no more stringent than federal standards.** (1) Except
24 as provided in subsections (2) through (6), unless required by state law, the board may not adopt a rule
25 to implement this chapter that is more stringent than the corresponding federal regulations that address the
26 same circumstances. The board may incorporate by reference corresponding federal regulations.

27 (2) The board may adopt a rule to implement this chapter that is more stringent than corresponding
28 federal regulations or adopt rules when there are no corresponding federal regulations only if the board
29 makes a written finding after a public hearing and public comment and based on evidence in the record that
30 the corresponding federal regulations are not adequate to protect public health or the environment of the

1 state. This finding must be accompanied by a summarizing conclusion statement referring to and evaluating
2 the probability of harm to public health or the environment at the level of the federal rule or regulation and
3 the specific improvement in the public health or environment from the stricter state rule. The statement
4 must reference information and studies contained in the record that form the basis for the board's
5 conclusion.

6 (3) The summarizing conclusion statement must include but is not limited to a discussion of the
7 policy reasons and a risk-cost analysis that supports the board's decision to impose the standards or
8 requirements and also supports the fact that the state standard or requirement to be imposed can mitigate
9 the increased probability of harm to the public health or environment and is achievable under current
10 technology, notwithstanding the federal government's determination that lesser standards or requirements
11 are appropriate and protective of public health or the environment.

12 (4) If the board, upon petition by any person affected by a rule of the board, identifies rules more
13 stringent than federal regulations or identifies rules for which there are no corresponding federal regulations,
14 the board shall review and revise those rules to comply with this section within 9 months of the filing of
15 the petition.

16 (5) a person who is issued a notice of violation or a denial of a permit or other approval based on
17 a rule that is more stringent than a corresponding federal regulation or for which there is no corresponding
18 regulation may assert a partial defense to that notice or a partial challenge to that denial on the basis and
19 to the extent that the rule violates this section because it imposes requirements more stringent than the
20 federal regulations, unless the more stringent rule was adopted in compliance with this section.

21 (6) (a) The board shall review and propose revisions to its rules to ensure compliance with this
22 section by October 1, 1995. The board shall revise its rules to comply with this section by October 1,
23 1996.

24 (b) The board may propose and adopt revisions to its rules prior to the dates specified in subsection
25 (6)(a) upon petition for rulemaking by a person as provided under 2-4-315 and subsection (4) of this
26 section.

27
28 **NEW SECTION. Section 2. State standards no more stringent than federal standards.** (1) Except
29 as provided in subsections (2) through (6), unless required by state law, the board or department may not
30 adopt a rule to implement this chapter that is more stringent than the corresponding federal regulations that

1 address the same circumstances. The board or department may incorporate by reference corresponding
2 federal regulations.

3 (2) The board or department may adopt a rule to implement this chapter that is more stringent than
4 corresponding federal regulations or adopt rules when there are no corresponding federal regulations only
5 if the board or department makes a written finding after a public hearing and public comment and based
6 on evidence in the record that the corresponding federal regulations are not adequate to protect public
7 health or the environment of the state. This finding must be accompanied by a summarizing conclusion
8 statement referring to and evaluating the probability of harm to public health or the environment at the level
9 of the federal rule or regulation and the specific improvement in the public health or environment from the
10 stricter state rule. The statement must reference information and studies contained in the record that form
11 the basis for the board's or department's conclusion.

12 (3) The summarizing conclusion statement must include but is not limited to a discussion of the
13 policy reasons and a risk-cost analysis that supports the board's or department's decision to impose the
14 standards or requirements and also supports the fact that the state standard or requirement to be imposed
15 can mitigate the increased probability of harm to the public health or environment and is achievable under
16 current technology, notwithstanding the federal government's determination that lesser standards or
17 requirements are appropriate and protective of public health or the environment.

18 (4) If the board or department, upon petition by any person affected by a rule of the board or
19 department, identifies rules more stringent than federal regulations or identifies rules for which there are
20 no corresponding federal regulations, the board or department shall review and revise those rules to comply
21 with this section within 9 months of the filing of the petition.

22 (5) A person who is issued a notice of violation or a denial of a permit or other approval based on
23 a rule that is more stringent than a corresponding federal regulation or for which there is no corresponding
24 regulation may assert a partial defense to that notice or a partial challenge to that denial on the basis and
25 to the extent that the rule violates this section because it imposes requirements more stringent than the
26 federal regulations, unless the more stringent rule was adopted in compliance with this section.

27 (6) (a) The board or department shall review and propose revisions to its rules to ensure compliance
28 with this section by October 1, 1995. The board or department shall revise its rules to comply with this
29 section by October 1, 1996.

30 (b) The board or department may propose and adopt revisions to its rules prior to the dates

specified in subsection (6)(a) upon petition for rulemaking by a person as provided under 2-4-315 and subsection (4) of this section.

NEW SECTION. Section 3. State standards no more stringent than federal standards. (1) Except

as provided in subsections (2) through (6), unless required by state law, the department may not adopt a rule to implement this chapter that is more stringent than the corresponding federal regulations that address the same circumstances. The department may incorporate by reference corresponding federal regulations.

(2) The department may adopt a rule to implement this chapter that is more stringent than corresponding federal regulations or adopt rules where there are no corresponding federal regulations only if the department makes a written finding after a public hearing and public comment and based on evidence in the record that the corresponding federal regulations are not adequate to protect public health or the environment of the state. This finding must be accompanied by a summarizing conclusion statement referring to and evaluating the probability of harm to public health or the environment at the level of the federal rule or regulation and the specific improvement in the public health or environment from the stricter state rule. The statement must reference information and studies contained in the record that form the basis for the department's conclusion.

(3) The summarizing conclusion statement must include but is not limited to a discussion of the policy reasons and a risk-cost analysis that supports the department's decision to impose the standards or requirements and also supports the fact that the state standard or requirement to be imposed can mitigate the increased probability of harm to the public health or environment and is achievable under current technology, notwithstanding the federal government's determination that lesser standards or requirements are appropriate and protective of public health or the environment.

(4) If the department, upon petition by any person affected by a rule of the department, identifies rules more stringent than federal regulations or identifies rules for which there are no corresponding federal regulations, the department shall review and revise those rules to comply with this section within 9 months of the filing of the petition.

(5) A person who is issued a notice of violation or a denial of a permit or other approval based on a rule that is more stringent than a corresponding federal regulation or for which there is no corresponding regulation may assert a partial defense to that notice or a partial challenge to that denial on the basis and to the extent that the rule violates this section because it imposes requirements more stringent than the

1 federal regulations, unless the more stringent rule was adopted in compliance with this section.

2 (6) (a) The department shall review and propose revisions to its rules to ensure compliance with
3 this section by October 1, 1995. The department shall revise its rules to comply with this section by
4 October 1, 1996.

5 (b) The department may propose and adopt revisions to its rules prior to the dates specified in
6 subsection (6)(a) upon petition for rulemaking by a person as provided under 2-4-315 and subsection (4)
7 of this section.

8
9 **Section 4.** Section 75-2-111, MCA, is amended to read:

10 **"75-2-111. Powers of board.** The board shall, subject to the provisions of [section 2]:

11 (1) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this
12 chapter, for issuing orders under and in accordance with 42 U.S.C. 7419, and for fulfilling the requirements
13 of 42 U.S.C. 7420 and regulations adopted pursuant thereto;

14 (2) hold hearings relating to any aspect of or matter in the administration of this chapter at a place
15 designated by the board. The board may compel the attendance of witnesses and the production of
16 evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall
17 appoint a reporter who ~~shall~~ must be present at all hearings and take full stenographic notes of all
18 proceedings ~~thereat~~, transcripts of which will be available to the public at cost.

19 (3) issue orders necessary to effectuate the purposes of this chapter;

20 (4) by rule require access to records relating to emissions;

21 (5) by rule adopt a schedule of fees required for permits and permit applications, consistent with
22 this chapter;

23 (6) have the power to issue orders under and in accordance with 42 U.S.C. 7419."
24

25 **Section 5.** Section 75-2-301, MCA, is amended to read:

26 **"75-2-301. Local air pollution control programs.** (1) After public hearing, a municipality or county
27 may establish and administer a local air pollution control program if the program is consistent with this
28 chapter and is approved by the board.

29 (2) If a local air pollution control program established by a county encompasses all or part of a
30 municipality, the county and each municipality shall approve the program in accordance with subsection

1 (1).

2 (3) (a) Except as provided in subsection (4), the board by order may approve a local air pollution
3 control program that:

4 ~~(a)(i)~~ provides by ordinance or local law for requirements compatible with, more stringent than, or
5 more extensive than those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212, 75-2-215, 75-2-217
6 through 75-2-219, and 75-2-402, and rules adopted under these sections;

7 ~~(b)(ii)~~ provides for the enforcement of requirements established under subsection (3)(a)(i) by
8 appropriate administrative and judicial processes; and

9 ~~(c)(iii)~~ provides for administrative organization, staff, financial resources, and other resources
10 necessary to effectively and efficiently carry out the program. As part of meeting these requirements, a
11 local air pollution control program may administer the permit fee provisions of 75-2-220. The permit fees
12 collected by a local air pollution control program must be deposited in a county special revenue fund to be
13 used by the local air pollution control program for administration of permitting activities.

14 (b) Board approval of an ordinance or local law that is more stringent than the corresponding state
15 law or for which no state law exists is not subject to the provisions of [section 2].

16 (4) Except for those emergency powers provided for in 75-2-402, the board may not delegate to
17 a local air pollution control program the authority to control any air pollutant source that:

18 (a) requires the preparation of an environmental impact statement in accordance with Title 75,
19 chapter 1, part 2;

20 (b) is subject to regulation under the Montana Major Facility Siting Act, as provided in Title 75,
21 chapter 20; or

22 (c) has the potential to emit 250 tons ~~per~~ a year or more of any pollutant subject to regulation
23 under this chapter, including fugitive emissions, unless the authority to control the source was delegated
24 to a local air pollution control program prior to January 1, 1991.

25 (5) If the board finds that the location, character, or extent of particular concentrations of
26 population, air pollutant sources, or geographic, topographic, or meteorological considerations or any
27 combination of these ~~are such as to~~ make impracticable the maintenance of appropriate levels of air quality
28 without an areawide air pollution control program, the board may determine the boundaries within which
29 the program is necessary and require it as the only acceptable alternative to direct state administration.

30 (6) If the board has reason to believe that any part of an air pollution control program in force under

1 this section is either inadequate to prevent and control air pollution in the jurisdiction to which the program
2 relates or is being administered in a manner inconsistent with this chapter, the board shall, on notice,
3 conduct a hearing on the matter.

4 (7) If, after the hearing, the board determines that any part of the program is inadequate to prevent
5 and control air pollution in the jurisdiction to which it relates or that it is not accomplishing the purposes
6 of this chapter, it shall require that necessary corrective measures be taken within a reasonable time, not
7 to exceed 60 days.

8 (8) If the jurisdiction fails to take these measures within the time required, the department shall
9 administer within that jurisdiction all of the provisions of this chapter, including the terms contained in any
10 applicable board order, that are necessary to correct the deficiencies found by the board. The department's
11 control program supersedes all municipal or county air pollution laws, rules, ordinances, and requirements
12 in the affected jurisdiction. The cost of the department's action is a charge on the jurisdiction.

13 (9) If the board finds that the control of a particular air pollutant source because of its complexity
14 or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently and
15 economically performed at the state level, it may direct the department to assume and retain control over
16 that air pollutant source. A charge may not be assessed against the jurisdiction. Findings made under this
17 subsection may be either on the basis of the nature of the sources involved or on the basis of their
18 relationship to the size of the communities in which they are located.

19 (10) A jurisdiction in which the department administers all or part of its air pollution control
20 program under subsection (8) may, with the approval of the board, establish or resume an air pollution
21 control program that meets the requirements of subsection (3).

22 (11) A municipality or county may administer all or part of its air pollution control program in
23 cooperation with one or more municipalities or counties of this state or of other states."

24
25 **Section 6.** Section 75-2-503, MCA, is amended to read:

26 **"75-2-503. Rulemaking authority -- issuance of permits.** (1) The department shall, subject to the
27 provisions of [section 2], adopt rules establishing standards and procedures for accreditation of
28 asbestos-related occupations and control of the work performed by persons in asbestos-related
29 occupations. The rules must be consistent with federal law and include but are not limited to:

30 (a) standards for training course review and approval;

- (b) standards for accreditation of applicants for asbestos-related occupations;
- (c) examination requirements for accreditation of applicants for asbestos-related occupations;
- (d) requirements for renewal of accreditation, including periodic refresher courses;
- (e) revocation of accreditation;
- (f) inspection requirements for asbestos projects and asbestos-related occupations credentials;
- (g) criteria to determine whether and what type of control measures are necessary for an asbestos project and whether a project is completed in a manner sufficient to protect public health, including criteria setting allowable limits on indoor airborne asbestos. A determination of whether asbestos abatement of a structure is necessary may not be based solely upon the results of airborne asbestos testing.
- (h) requirements for issuance of asbestos project permits and conditions that permit holders shall meet;
- (i) standards for seeking injunctions, criminal and civil penalties, or emergency actions;
- (j) advance notification procedures and issuance of permits for asbestos projects; and
- (k) fees, which must be commensurate with costs, for:
- (i) review and approval of training courses;
- (ii) application for and renewal of accreditation by a person seeking to pursue an asbestos-related occupation;
- (iii) issuance of asbestos project permits; and
- (iv) requested inspections of asbestos projects.

(2) For asbestos projects having a cost of \$3,000 or less, the department shall issue asbestos project permits within 7 calendar days following the receipt of a properly completed permit application and the appropriate fee."

Section 7. Section 75-3-201, MCA, is amended to read:

"75-3-201. State radiation control agency. (1) The department is the state radiation control agency.

(2) Under the laws of this state, the department may employ, compensate, and prescribe the powers and duties of the individuals ~~which~~ that are necessary to carry out this chapter.

(3) The department may, subject to the provisions of [section 3], for the protection of the occupational and public health and safety:

- (a) develop and conduct programs for evaluation and control of hazards associated with the use

1 of sources of ionizing radiation;

2 (b) develop programs and adopt rules with due regard for compatibility with federal programs for
3 licensing and regulation of byproduct, source, radioactive waste, and special nuclear materials and other
4 radioactive materials. These rules ~~shall~~ must cover equipment and facilities, methods for transporting,
5 handling, and storage of radioactive materials, permissible levels of exposure, technical qualifications of
6 personnel, required notification of accidents and other incidents involving radioactive materials, survey
7 methods and results, methods of disposal of radioactive materials, posting and labeling of areas and
8 sources, and methods and effectiveness of controlling individuals in posted and restricted areas.

9 (c) adopt rules relating to control of other sources of ionizing radiation. These rules ~~shall~~ must cover
10 equipment and facilities, permissible levels of exposure to personnel, posting of areas, surveys, and records.

11 (d) advise, consult, and cooperate with other agencies of the state, the federal government, other
12 states, interstate agencies, political subdivisions, and groups concerned with control of sources of ionizing
13 radiation;

14 (e) accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in
15 furtherance of its functions, from the federal government and from other sources, public or private;

16 (f) encourage, participate in, or conduct studies, investigations, training, research, and
17 demonstrations relating to control of sources of ionizing radiation;

18 (g) collect and disseminate information relating to control of sources of ionizing radiation, including:

19 (i) maintenance of a file of all license applications, issuances, denials, amendments, transfers,
20 renewals, modifications, suspensions, and revocations;

21 (ii) maintenance of a file of registrants possessing sources of ionizing radiation requiring registration
22 under this chapter and any administrative or judicial action pertaining ~~thereto~~ to this chapter;

23 (iii) maintenance of a file of all rules relating to regulation of sources of ionizing radiation, pending
24 or adopted, and proceedings ~~thereon~~."

25
26 **Section 8.** Section 75-5-201, MCA, is amended to read:

27 **"75-5-201. Board rules authorized.** (1) The board shall subject to the provisions of [section 1],
28 adopt rules for the administration of this chapter.

29 (2) The board's rules may include a fee schedule or system for assessment of administrative
30 penalties as provided under 75-5-611."

1 **Section 9.** Section 75-5-311, MCA, is amended to read:

2 **"75-5-311. Local water quality districts -- board approval -- local water quality programs.** (1) A
3 county that establishes a local water quality district according to the procedures specified in Title 7, chapter
4 13, part 45, shall, in consultation with the department, undertake planning and information-gathering
5 activities necessary to develop a proposed local water quality program.

6 (2) A county may implement a local water quality program in a local water quality district if the
7 program is approved by the board after a hearing conducted under 75-5-202.

8 (3) In approving a local water quality program, the board shall determine that the program is
9 consistent with the purposes and requirements of Title 75, chapter 5, and that the program will be effective
10 in protecting, preserving, and improving the quality of surface water and ground water, considering the
11 administrative organization, staff, and financial and other resources available to implement the program.

12 (4) Subject to the board's approval, the commissioners and the governing bodies of cities and
13 towns that participate in a local water quality district may adopt local ordinances to regulate the following
14 specific facilities and sources of pollution:

15 (a) onsite waste water disposal facilities;

16 (b) storm water runoff from paved surfaces;

17 (c) service connections between buildings and publicly owned sewer mains;

18 (d) facilities that use or store halogenated and nonhalogenated solvents, including hazardous
19 substances that are referenced in 40 CFR 261.31, United States environmental protection agency
20 hazardous waste numbers F001 through F005, as amended; and

21 (e) internal combustion engine lubricants.

22 (5) (a) For the facilities and sources of pollution included in subsection (4) and consistent with the
23 provisions of subsection (6), the local ordinances may:

24 ~~(a)~~ (i) be compatible with or more stringent or more extensive than the requirements imposed by
25 75-5-304, 75-5-305, and 75-5-401 through 75-5-404 and rules adopted under those sections to protect
26 water quality, establish waste discharge permit requirements, and establish best management practices for
27 substances that have the potential to pollute state waters;

28 ~~(b)~~ (ii) provide for administrative procedures, administrative orders and actions, and civil
29 enforcement actions that are consistent with 75-5-601 through 75-5-604, 75-5-611 through 75-5-616,
30 75-5-621, and 75-5-622 and rules adopted under those sections; and

1 ~~te)(iii)~~ provide for civil penalties not to exceed \$1,000 per violation, provided that each day of
2 violation of a local ordinance constitutes a separate violation, and criminal penalties not to exceed \$500
3 per day of violation or imprisonment for not more than 30 days, or both.

4 (b) Board approval of an ordinance or local law that is more stringent than the corresponding state
5 law or for which no state law exists is not subject to the provisions of [section 1].

6 (6) The local ordinances authorized by this section may not:

7 (a) duplicate the department's requirements and procedures relating to permitting of waste
8 discharge sources and enforcement of water quality standards;

9 (b) regulate any facility or source of pollution to the extent that the facility or source is:

10 (i) required to obtain a permit or other approval from the department or federal government or is
11 the subject of an administrative order, a consent decree, or an enforcement action pursuant to Title 75,
12 chapter 5, part 4; Title 75, chapter 6; Title 75, chapter 10; the federal Comprehensive Environmental
13 Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 through 9675, as amended; or federal
14 environmental, safety, or health statutes and regulations;

15 (ii) exempted from obtaining a permit or other approval from the department because the facility
16 or source is required to obtain a permit or other approval from another state agency or is the subject of an
17 enforcement action by another state agency; or

18 (iii) subject to the provisions of Title 80, chapter 8 or chapter 15.

19 (7) If the boundaries of a district are changed after the board has approved the local water quality
20 program for the district, the board of directors of the local water quality district shall submit a program
21 amendment to the board and obtain the board's approval of the program amendment before implementing
22 the local water quality program in areas that have been added to the district.

23 (8) The department shall monitor the implementation of local water quality programs to ensure that
24 the programs are adequate to protect, preserve, and improve the quality of the surface water and ground
25 water and are being administered in a manner consistent with the purposes and requirements of Title 75,
26 chapter 5. If the department finds that a local water quality program is not adequate to protect, preserve,
27 and improve the quality of the surface water and ground water or is not being administered in a manner
28 consistent with the purposes and requirements of Title 75, chapter 5, the department shall report to the
29 board.

30 (9) If the board determines that a local water quality program is inadequate to protect, preserve,

1 and improve the quality of the surface water and ground water in the local water quality district or that the
2 program is being administered in a manner inconsistent with Title 75, chapter 5, the board shall give notice
3 and conduct a hearing on the matter.

4 (10) If after the hearing the board determines that the program is inadequate to protect, preserve,
5 and improve the quality of the surface water and ground water in the local water quality district or that it
6 is not being administered in a manner consistent with the purposes of Title 75, chapter 5, the board shall
7 require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

8 (11) If an ordinance adopted under this section conflicts with a requirement imposed by the
9 department's water quality program, the department's requirement supersedes the local ordinance.

10 (12) If the board finds that, because of the complexity or magnitude of a particular water pollution
11 source, the control of the source is beyond the reasonable capability of a local water quality district or may
12 be more efficiently and economically performed at the state level, the board may direct the department to
13 assume and retain control over the source. A charge may not be assessed against the local water quality
14 district for that source. Findings made under this subsection may be based on the nature of the source
15 involved or on the source's relationship to the size of the community in which it is located."

16
17 **Section 10.** Section 75-6-103, MCA, is amended to read:

18 **"75-6-103. Duties of the board.** (1) The board has general supervision over all state waters ~~which~~
19 that are directly or indirectly being used by a person for a public water supply system or domestic purposes
20 or as a source of ice.

21 (2) The board shall, subject to the provisions of [section 1], adopt rules and standards concerning:

22 (a) maximum contaminant levels for waters that are or will be used for a public water supply
23 system;

24 (b) fees, as described in 75-6-108, for services rendered by the department;

25 (c) monitoring, recordkeeping, and reporting by persons who own or operate a public water supply
26 system;

27 (d) requiring public notice to all users of a public water supply system when a person has been
28 granted a variance or exemption or is in violation of this part or a rule or order issued pursuant to this part;

29 (e) the issuance of licenses by the department to laboratories that conduct analysis of public water
30 supply systems;

(f) the siting, construction, operation, and modification of a public water supply system or public sewage system;

(g) the review of financial viability of a proposed public water supply system or public sewage system, as necessary to ensure the capability of the system to meet the requirements of this part;

(h) the collection and analysis of samples of water used for drinking or domestic purposes;

(i) the issuance of variances and exemptions as authorized by the federal Safe Drinking Water Act and this part;

(j) administrative enforcement procedures and administrative penalties authorized under this part; and

(k) any other requirement necessary for the protection of public health as described in this part.

(3) The board may issue orders necessary to fully implement the provisions of this part."

Section 11. Section 75-10-204, MCA, is amended to read:

"75-10-204. Powers and duties of department. The department shall, subject to the provisions of [section 3], adopt rules governing solid waste management systems ~~which shall~~ that must include but are not limited to:

(1) requirements for the plan of operation and maintenance that must be submitted with an application under this part;

(2) the classification of disposal sites according to the physical capabilities of the site to contain the type of solid waste to be disposed of;

(3) the procedures to be followed in the disposal, treatment, or transport of solid wastes;

(4) the suitability of the site from a public health standpoint when hydrology, geology, and climatology are considered;

(5) requirements relating to ground water monitoring, including but not limited to:

(a) information that owners and operators of municipal solid waste landfills and other disposal sites specified in 75-10-207 must submit to the department to enable the department to prepare the priority compliance list authorized by 75-10-207(3);

(b) the content of plans for the design, construction, operation, and maintenance of monitoring wells and monitoring systems; and

(c) recordkeeping and reporting;

1 (6) fees related to the review of solid waste management system license applications;

2 (7) the renewal of solid waste management system licenses and related fees;

3 (8) a quarterly fee based on the justifiable direct and indirect costs to the state of administering
4 Title 75, chapter 10, parts 1 and 2, for solid waste generated outside Montana and disposed of or
5 incinerated within Montana; ~~These rules must be adopted by August 1, 1993.~~

6 (9) any other factors relating to the sanitary disposal or management of solid wastes."
7

8 **Section 12.** Section 75-10-405, MCA, is amended to read:

9 **"75-10-405. Administrative rules.** (1) The department may, subject to the provisions of [section
10 3], adopt, amend, or repeal rules governing hazardous waste, including but not limited to the following:

11 (a) identification and classification of those hazardous wastes subject to regulation and those that
12 are not;

13 (b) requirements for the proper treatment, storage, transportation, and disposal of hazardous
14 waste;

15 (c) requirements for siting, design, operation, maintenance, monitoring, inspection, closure,
16 postclosure, and reclamation of hazardous waste management facilities;

17 (d) requirements for the issuance, denial, reissuance, modification, and revocation of permits for
18 hazardous waste management facilities;

19 (e) requirements for corrective action within and outside of facility boundaries and for financial
20 assurance of that corrective action;

21 (f) requirements for manifests and the manifest system for tracking hazardous waste and for
22 reporting and recordkeeping by generators, transporters, and owners and operators of hazardous waste
23 management facilities;

24 (g) requirements for training of facility personnel and for financial assurance of facility owners and
25 operators and for liability of guarantors providing financial assurance;

26 (h) requirements for registration of generators and transporters;

27 (i) establishing a schedule of fees and procedures for the collection of fees for:

28 (i) the filing and review of hazardous waste management facility permits as provided in 75-10-432;

29 (ii) hazardous waste management as provided in 75-10-433;

30 (iii) the reissuance and modification of hazardous waste management facility permits; and

- 1 (iv) the registration of hazardous waste generators;
- 2 (j) a schedule of fees to defray a portion of the costs of establishing, operating, and maintaining
3 any state hazardous waste management facility authorized by 75-10-412;
- 4 (k) requirements for availability to the public of information obtained by the department regarding
5 facilities and sites used for the treatment, storage, and disposal of hazardous wastes;
- 6 (l) procedures for the assessment of administrative penalties as authorized by 75-10-424; and
- 7 (m) other rules ~~which~~ that are necessary to obtain and maintain authorization under the federal
8 program.
- 9 (2) The department may not adopt rules under this part that are more restrictive than those
10 promulgated by the federal government under the Resource Conservation and Recovery Act of 1976, as
11 amended, except that the department:
- 12 (a) may require the registration of transporters not otherwise required to register with the state of
13 Montana pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended;
- 14 (b) may require generators and facilities to report on an annual rather than on a biennial basis;
- 15 (c) may adopt requirements for the prevention and correction of leakage from underground storage
16 tanks, including:
- 17 (i) reporting by owners and operators;
- 18 (ii) financial responsibility;
- 19 (iii) release detection, prevention, and corrective action;
- 20 (iv) standards for design, construction, installation, and closure;
- 21 (v) development of a schedule of fees, not to exceed \$50 for a tank over 1,100 gallons and not
22 to exceed \$20 for a tank 1,100 gallons or less, per tank, for tank notification and permits to defray state
23 and local costs of implementing an underground storage tank program;
- 24 (vi) a penalty schedule and a system for assessment of administrative penalties, notice, and appeals
25 under 75-10-423; and
- 26 (vii) delegation of authority and funds to local agents for inspections and implementation. The
27 delegation of authority to local agents must complement and may not duplicate existing authority for
28 implementation of rules adopted by the department of justice that relate to underground storage tanks.
- 29 (d) may adopt regulatory requirements for hazardous waste transfer facilities;
- 30 (e) shall require the owner or manager of any proposed commercial facility for the storage,

1 collection, or transfer of hazardous waste to conduct a public hearing, as provided for in 75-10-441; and

2 (f) may adopt rules and performance standards for industrial furnaces and boilers that burn
3 hazardous wastes. The rules and performance standards:

4 (i) may be adopted if there are no federal regulations; or

5 (ii) may be more restrictive than federal regulations.

6 (3) If the department adopts rules under subsection (2) that are more restrictive than those
7 promulgated by the federal government under the Resource Conservation and Recovery Act of 1976, as
8 amended, the department shall comply with the provisions of [section 3] if it receives a petition as provided
9 under [section 3(4)]."

10
11 **Section 13.** Section 75-10-603, MCA, is amended to read:

12 **"75-10-603. Cooperative agreement -- authority of department.** (1) In order to assist in
13 implementation of CERCLA, the department may, subject to the provisions of [section 3]:

14 (a) participate in the determination of appropriate remedial action to deal with the release or
15 threatened release within Montana of:

16 (i) any contaminant presenting an imminent and substantial danger to public health or welfare; or

17 (ii) any hazardous substance;

18 (b) in the event of the release or threatened release of any of the substances described in
19 subsection (1)(a), negotiate the terms of a cooperative agreement with the federal government containing
20 mutual commitments of each party to remedial action, including the elements required by subsection (2).

21 (2) A cooperative agreement may contain the following assurances:

22 (a) the state of Montana will ~~assure~~ ensure the future maintenance of the removal and remedial
23 actions agreed upon for the expected life of the actions;

24 (b) a hazardous waste disposal facility is available to the state of Montana that meets the
25 specifications of the president and complies with the requirements of subtitle C of the federal Solid Waste
26 Disposal Act for necessary offsite storage, destruction, treatment, or secure disposition of the hazardous
27 substances; and

28 (c) the state of Montana will pay or ~~assure~~ ensure payment of a share of the costs of the remedial
29 action, including all future maintenance."

(3) [Section 3] is intended to be codified as an integral part of Title 75, chapter 3; and Title 75, chapter 10, and the provisions of Title 75, chapter 3; and Title 75, chapter 10, apply to [section 3].

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0521, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act prohibiting certain state administrative agency rules from being more stringent than corresponding federal regulations, and requiring the Board of Health and Environmental Sciences and the Department of Health and Environmental Sciences (DHES) to review and revise certain rules to ensure compliance with this act.

ASSUMPTIONS:

1. The Executive Budget present law base serves as the starting point from which to determine any fiscal impact due to this proposed legislation.

2. This act will apply only to rules where no current state statutes exist that direct the department to adopt certain standards, regardless of whether federal standards and/or guidelines for standards exist. Examples of rules which are not presumed reviewable under HB521, given this assumption are:

Surface Water Quality Standards

Mixing Zone Rules

Non Degradations Rules

Surface Water Discharge Permit Rules

Preconstruction or Plan and Specification Review (Water)

Groundwater Rules

3. This bill does not impact those areas where department standards are more stringent than federal standards, as specifically required by state law. Examples of rules under this category would be:

Commercial hazardous and medical waste incinerator permitting rules (under development) that are intended to be more stringent than federal Boiler and Industrial Furnace (BIF) regulations by virtue of state statutory direction.

4. The bill will not impact rules that set fees or administrative penalty schedules since rules on these matters do not constitute regulatory "standards" and are not comparable on a stringency standards basis.

Examples of bills under this category would be:

the fee rules to generate fees that are based upon state statutory authority to set such fees even though in some cases DHES fees are less than what would be charged by a federal counterpart. On the other hand, the federal counterpart agency would not charge fees that currently are being charged by the state. Nevertheless, state law creates fee setting authority.

5. The bill does not impact rules that are promulgated by the department under the authority of the primacy agreements with the federal EPA wherein the state is obligated to regulate a matter even in the absence of prescriptive federal standards.

Examples of rules under this category would be:

Air Quality General Provision rules that address malfunctions, circumvention and source testing protocols.

Air Quality Prevention of Significant Deterioration rules

Air Quality Visibility Impact Assessment rules

Air Quality Permit, Construction, and Operation of air contaminant sources rules

Stack height and dispersion technique rules

Open burning rules

Emission standards rules

(continued)

Dave Lewis 2.18.95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

DOUGLAS WAGNER, PRIMARY SPONSOR DATE

Fiscal Note for HB0521, as introduced

HB521

Many of the above listed air quality rules contain state standards for which there are federal counterparts. However, all of these rules are required as part of the general State Implementation Plan (SIP) which is required by federal law, reviewed by the EPA, approved by the EPA, and which is enforceable by the EPA. In effect, DHES, through the primacy agreement with the EPA, acts as an agent for the federal government in establishing rules, standards and requirements for SIP purposes in lieu of the EPA exercising its own authority to do the same thing through a Federal Implementation Plan (FIP). Therefore, state standards become the equivalent federal standards for SIP purposes.

6. The bill does not intend to review rules that are the equivalent of or "mirror" federal requirements or standards.

Examples of rules under this category are:

- . Permit requirements for Major Stationary Sources (Air Quality)
- . Preconstruction Permit requirements for Major Stationary sources (Air Quality)
- . Lead and copper rules for Drinking Water (Water Quality)

7. The items listed in assumptions two through six do not constitute an exhaustive or complete listing of the rules and standards that DHES assumes are not reviewable under this bill. Those that are listed serve as examples of those that do fit under the various categories.
8. Review of rules by October 1995 and re-promulgation of rules by October 1996 will have to be performed by additional staff since most current staff operating within specific program areas funded under specific grant program requirements could not work on this type of a project. EPA would not allow the use of federal grants dollars to be spent for this purpose.
9. The department, for those rules that are more stringent than the federal counterpart and therefore reviewable under the provisions of HB521, would opt to "roll back" to full conformity with federal requirements rather than to defend their stringency difference per HB521 procedures for most remaining rules. For the following specific exceptions, the department would conduct studies to defend state standards:
- Public drinking water rules relative to surface water treatment that requires each filter in a water treatment plant to meet turbidity standards as a means of protecting the public from infection from giardia and cryptosporidium. Estimated cost for complying with the cost risk analysis and other requirements of HB521 to re-promulgate this rule that is more stringent than the federal counterpart is \$200,000.
 - Public drinking water rules relative to requirements for a 12 month running maximum contaminant level for total coliform sampling. Estimated cost for complying with the cost risk analysis and other requirements of HB521 to re-promulgate this rule that is more stringent than the federal counterpart is \$200,000.
 - Petroleum contaminated soils cleanup guidelines for the Underground Storage Tank program. Since there are no comparable federal standards and no specific state mandate, the costs for defending these rules or guidelines would be approximately \$250,000.
 - Minimum treatment requirements for treatment of wastes containing nitrogen to state waters. Since there are no comparable federal requirements, the cost for defending this requirement would be approximately \$200,000 to \$500,000 dollars.
 - State ambient air quality standards for nine air pollutants. With the exception of the particulate (PM-10) standard, which is equivalent to the federal standard, the remaining state ambient air quality standards are more stringent than corresponding federal standards or have no federal counterpart. The state adopted these standards in 1980 after a two year study (costing approximately \$250,000) and completed a health risk assessment and an estimate of the costs (in 1980) to industry to implement the standards. If the 1980 Environmental Impact Statement and

(continued)

analysis is not adequate to comply with HB521 requirements, the estimated cost for redoing the risk-cost and technology analyses is \$250,000 per standard for nine standards for a total cost of \$2,250,000.

FISCAL IMPACT:Expenditures:

	<u>FY96</u> <u>Difference</u>	<u>FY97</u> <u>Difference</u>
Operating Expense	2,900,000	2,900,000

Funding:

General Fund	2,900,000	2,900,000
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Net Impact on General Fund Balance:

General Fund (Cost) (01)	(2,900,000)	(2,900,000)
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STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0521, as second reading

DESCRIPTION OF PROPOSED LEGISLATION:

An act requiring certain state administrative and local agencies to justify the adoption of rules that are more stringent than corresponding federal regulations, and requiring the Board of Health and Environmental Sciences, the Department of Health and Environmental Sciences (DHES), and local units of government to review and revise certain rules to ensure compliance with this act.

ASSUMPTIONS:

1. The Executive Budget present law base serves as the starting point from which to determine any fiscal impact due to this proposed legislation.
2. The bill as drafted and amended for second reading stipulates that retroactive petitions challenging rules already in effect can only impact rules promulgated from January 1, 1990, forward to the effective date of this act. The department does not have any method for determining how many substantive challenges would be made under this provision. For purposes of this fiscal note, assume there will be none.
3. The only rules that are reviewable under the provisions of this act, prospectively or retrospectively, are those rules where there is a direct comparable set of federal rules or guidelines. (Please see Technical Notes.)
4. HB521 is not intended to force the DHES to justify whether or not federal rules and regulations are sufficient to protect public health. Reasons of protecting public health and the environment are only at issue if the board, DHES, or local units of government promulgate a rule that is more stringent than a directly comparable federal counterpart of that rule.
5. HB521 intends to require either the board or DHES, when promulgating rules that are more stringent than directly comparable federal standards, to produce a formal "findings statement" that is supported by the documentation required in the second reading version. HB521 does not require DHES to engage in costly scientific and economic research other than to justify its actions on the basis of available validated research from other sources.
6. The bill is intended by the sponsor and proponents to focus solely on prospective reviews of rules that may be considered more stringent than comparable federal standards or guidelines, with a window provided for review of existing state guidelines (see assumption #2 above).

FISCAL IMPACT:

Minimal fiscal impact; however, it is not possible to determine the exact amount of additional workload. However, if there are substantive challenges through the petition process on rules already in effect between January 1, 1990 and the effective date of this bill, the impact would create a significant workload increase to the department.

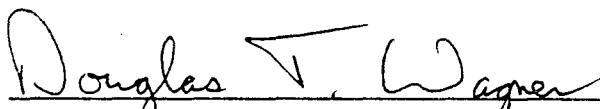
TECHNICAL NOTES:

There are language issues in the bill, for example, "comparable federal rules or guidelines" should be defined to provide guidance in administering this law. Clarification of the department and local government expectations and responsibilities will make administration of this act much less likely to be subject to litigation.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Unknown, but counties would have the same documentation and justification requirements as the state board and DHES. This is likely to impact workload in the counties and cities.

 3-21-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 3/21/95
DOUGLAS WAGNER, PRIMARY SPONSOR DATE

Fiscal Note for HB0521, as second reading

HB 521-#2

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **REP. DICK KNOX, CHAIRMAN**, on February 15, 1995, at 3:00 pm.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Bob Raney, Vice Chairman (Minority) (D)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. David Ewer (D)
Rep. Daniel C. Fuchs (R)
Rep. Hal Harper (D)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Paul Sliter (R)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)
Rep. Douglas T. Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Michael Kakuk, Environmental Quality Council
Alyce Rice, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 508, HB 489, HB 521, HB 538, HJR 22,
HJR 24

Executive Action: HB 403 Tabled
HB 489 Do Pass As Amended
HB 508 Tabled

Tape 1, Side A

from various property owners and blocked it together for use as a state fairground.

Closing by Sponsor:

REP. GRADY urged the committee to support HB 489.

HEARING ON HB 521

Opening Statement by Sponsor:

REP. DOUG WAGNER, House District 83, Hungry House, distributed and explained amendments to HB 521. EXHIBIT 4 REP. WAGNER said the bill was requested by various interest groups who are regulated by federal programs for clean air, clean water, radiation control, and solid and hazardous waste. The bill requires the Board of Health and Environmental Sciences (BHES) and the Department of Health and Environmental Sciences (DHES) must justify their actions when adopting rules more stringent than the corresponding federal requirements for the aforementioned programs.

Tape 2, Side A

REP. WAGNER said business, industry and the public have a right to know that the requirements imposed on them make sense and serve a worthwhile purpose. When the department or the board adopts rules that go beyond the minimum federal requirements it is required to include a statement summarizing the policy reasons for that decision. The statement must be published with the rules so the public has ready access to that information. The policy statement must include a risk/cost analysis that identifies the probability of harm to public health or the environment from limiting the requirement to the minimum federal standard and how that would be mitigated by stricter state standards. REP. WAGNER distributed a letter from Rem Kohrt, DHES, in support of HB 521. EXHIBIT 5

Proponents' Testimony:

Peggy Trenk, Western Environmental Trade Association, said the bill does not require the department or the board to conduct costly risk assessment studies in order to justify rules. The board or department is required to reference what existing scientific studies or related information it is using to identify the existence of a potential harm and to explain how a more stringent standard will mitigate it.

David Owen, Montana Chamber of Commerce, supported HB 521.

Andy Skinner, Housing Provider, said HB 521 will standardize the rules for everyone. Mr. Skinner said he has been working on the

development of a subdivision for nine years. During those nine years the county has continually made new rules. The state has water quality standards that require a depth of six feet to ground water. Lewis and Clark County adopted a rule for a depth of ten feet to ground water. The county was asked for a reason for that rule at a public hearing and the county sanitarian said that it was decided that ten feet was a good number. The result of that action is the implementation of sand filters. It costs the consumer \$5,500 a lot to put in a sand filter which the engineers in the community say has no merit. The cost over the life of a house for a couple in Helena increases \$17,000 over a 30-year loan for a system that puts more nitrates in the water than the system that is approved by the state. The counties must be accountable and must justify their rules.

Bruce Gilbert, Stillwater Mining Company, said there are those that will say that the bill will turn back the clock on environmental legislation. Nothing could be further from the truth. The bill represents a common sense approach to the adoption of regulations which neither seeks an end to state primacy nor the repeal of sound environmental policy.

The following proponents expressed their support for HB 521:

Gloria Paladichuk, Richland Development

Charles Brookes, Billings Chamber of Commerce

Carl Schweitzer, Montana Contractors Association

Steve Turkiewicz, Montana Automobile Dealers Association

Gail Abercrombie, Montana Petroleum Association

Tammy Johnson, Citizens United for a Realistic Environment

Larry Brown, Agricultural Preservation Association

Don Allen, Montana Wood Products Association

Ken Williams, Montana Power Company

Mike Murphy, Montana Water Resources Association

Stuart Doggett, Montana Manufactured Housing and RV Dealers Association

Rex Manuel, Cenex Refining Company

Gary Langley, Montana Mining Association

Dexter Busby, Montana Refining Company

Allen Barkley, Columbia Falls Aluminum Company

John Bloomquist, Montana Stockgrowers Association and Montana Farm Bureau

Russ Ritter, Washington Corporation

Tape 2, Side B

Opponents' Testimony:

Steve Kelly, Friends of the Wild Swan, said he didn't understand the purpose of the bill even after all the testimony. Cost/risk analysis will be a very costly procedure. The rules, as currently written, require agencies to inform the public about their procedures, environmental effects, risks, benefits and costs on each and every project. HB 521 is redundant, costly and unnecessary.

Bob Robinson, Director, Department of Health and Environmental Sciences, said HB 521 has some significant consequences on environmental protection in the state. DHES has been assigned the responsibility to protect public health and the environment under the state's numerous environmental protection laws. The bill would cause a massive re-analysis of the state's existing laws and would require completion by October 1995. The cost would be significant. The rules could be reproblicated, but the department would have to prove that the federal standards are not adequate to protect public health which is an almost impossible task. Federal standards are adequate to protect public health at the minimum level. Montanans are entitled to and deserve better than that. If the Legislature determines that HB 521 does not require the department to look at all the existing federal and state laws, the bill could be workable. If the department has to re-analyze all of the existing laws at the state and federal level, the workload and cost would be significant. It is not clear if the bill intends to eliminate fees in existing state rules that are not in federal rules. For a number of years the Legislature has directed that environmental protection programs be funded by fees. The department relies heavily on federal funding. Federal funds would not be available for re-analysis of all the rules. State funds would be needed to implement the bill.

The cost of doing a risk analysis for one contaminant, according to the EPA, is between \$250,000 and \$300,000. That would be the state's cost of doing a risk analysis to establish a standard for one metal in the water for which EPA doesn't have a standard. The department would have to analyze the state's drinking water standards for ground water. The federal government doesn't have ground water standards. An analysis would have to be done for each of the contaminants, each of the particulates, and each of the metals in order to establish a health risk assessment. The department has procedural requirements for public water supplies that require back flushing and rechecking of filters for protection from contamination. That is not required in the

federal public water supply standards. The department would have to do a cost risk analysis to prove that those procedures protected public health. HB 521 would be costly.

Janet Ellis, Montana Audubon Legislative Fund, said page 2, line 24 of the bill states that unless required by state law, the board may not adopt a rule that is more stringent than the corresponding federal regulations that address the same circumstances. The exemption, "unless required by state law," would mean that every rule would go through the legislative rule-making process because the Legislature doesn't have to meet the standards that state agencies are going to have to meet. On page 3, line 9, the bill sets a standard of "achievable under current technology." That is not how public health standards are generally set. They are set to protect public health. Standards are not justified by whether they are achievable under current technology.

Ted Lange, Northern Plains Resource Council, said the amendments that extend the proposed laws in HB 521 to the local level, makes this a major unfunded mandate. The bill is not a good use of taxpayers' money and it will cost taxpayers a lot of money.

The following opponents expressed their opposition to HB 521:

Mary Westwood, Montana Sulphur and Chemical Company

Melissa Case, Montanans for a Healthy Future

Debbie Smith, Sierra Club

Bev Barnard, Montanans Against Toxic Burning

Ann Hedges, Montana Environmental Information Center

J. V. Bennett, Montana Public Interest Research Group. Written testimony. EXHIBIT 6

Questions from Committee Members and Responses:

REP. SCOTT ORR asked **Mr. Robinson** how the department justifies making standards more stringent than federal standards. **Mr. Robinson** said in the case of air quality standards the study was the basis for justification.

Tape 3, Side A

REP. EMILY SWANSON asked **Ms. Trenk** who decides that more stringent standards are needed. **Ms. Trenk** said the party that is empowered to adopt the rules makes that decision.

REP. SWANSON asked **CHAIRMAN KNOX** if he intended to take executive action on the bill before the fiscal note, which is expected to be completed by February 18, is received. **CHAIRMAN KNOX** said

HOUSE NATURAL RESOURCES COMMITTEE

February 15, 1995

Page 9 of 16

executive action would not be taken until the committee has the fiscal note. **Mr. Kakuk** reminded **CHAIRMAN KNOX** that February 18 fell on a Saturday. **CHAIRMAN KNOX** said he understood there were some fairly significant implications from the expected fiscal note and was not comfortable acting on a bill of that magnitude without a fiscal note.

CHAIRMAN KNOX asked **Mr. Robinson** for a clarification of the difference between a risk/cost analysis and a risk/cost assessment. **Mr. Robinson** said a risk/cost assessment is an evaluation of what the public health risks are from various exposures to a contaminant. Someone has to do the scientific analysis whether it is a bench top study or a population study to say, for example, that one part per million or two parts per million represents a health risk. Then it has to be determined what the cost of that risk is. For example, it has to be determined if it is a one-in-a-million risk of cancer for someone who has been exposed for a lifetime, or if it is a one cancer in 100,000 risk. The risk cost analysis would be an evaluation of the cost of protecting against that risk.

REP. ORR said an arbitrary decision about nitrates cost the city of Libby 85 jobs two years ago and two or three hundred good paying jobs from that point on because the mine didn't get developed. The hospital in Libby is having financial problems because of the loss of high-paying jobs. When nitrate levels are set at 10 parts per million for the blue baby syndrome and at 20 parts per million for adults that would presumably be ingesting a lot of water. A baby would have to drink a lot of water during the day. He asked **Mr. Robinson** why the department couldn't assume that a baby isn't going to drink a gallon of water a day out of a creek, so therefore the nitrate levels could easily be at 100 parts per million which is common sense. **Mr. Robinson** said he didn't think nondegradation had a thing to do with the mine in Libby because that issue developed prior to the nondegradation law being passed. **Mr. Robinson** deferred the question to **Dr. Abe Horpestad**, **DHES**, **Water Quality Division**.

REP. ORR asked **Dr. Horpestad** how much water he would have to ingest per day at 20 parts per million to have a health problem. **Dr. Horpestad** said to have a risk problem he would have to ingest two quarts. EPA has various branches and various regulations and requirements. The state has to adopt ten parts per million for nitrates as a standard. There are no state standards in surface water quality that are more stringent than the federal requirements. Drinking water has a different set of standards that applies to water from a tap and takes into account the feasibility and the cost of treatment. It is wrong to assume there is no risk associated with drinking water that meets drinking water standards. There are no federal standards for nondegradation except for policies and a method for implementing them. The reason there is a trigger value of 2.5 parts per million for nitrates in ground water is because the department is

attempting to comply with the state law that says the quality of high quality water shall be protected.

Tape 3, Side B

Closing by the Sponsor:

REP. WAGNER said he wanted to propose an amendment to the bill to put a small appropriation in to help the department review the rules that it has been directed to do, so the transmittal deadline wouldn't have to be met.

HEARING ON HB 538

Opening Statement by Sponsor:

REP. DAVID EWER, House District 53, Helena, said HB 532 deals with water quality statutes and provides citizens the right to take private action to compel compliance with water quality statutes. The bill would empower Montanans to commence a civil action on their own behalf against a person, alleging a violation of a provision of section 75-5-636, MCA. The district court has jurisdiction to enforce the effluent standard, order, permit, rule, or provision. An aggrieved party could commence a civil action against DHES or the board, alleging a failure of the department or board to perform an act or duty required under the that section of law. The district court has jurisdiction to compel the department or board to perform the act or duty.

Proponents' Testimony:

Debbie Smith, Sierra Club, said a person must have an interest that is adversely affected before he can commence civil action. The bill allows citizens to sue in state court for documented permit violations. It opens up the judicial branch of government to actions where the executive branch of government has dropped the ball. HB 538 is not a radical bill. Ms. Smith urged the committee to pass the bill.

Jim Jensen, Environmental Information Center, said opponents will probably say there will be a potential for frivolous suits under the provisions of the bill. There has not been one frivolous citizen-initiated suit brought to enforce an environmental law in the State of Montana. There is a rule in the Montana Rules of Civil Procedures that allows judges to sanction attorneys who represent clients in frivolous actions. HB 538 is another tool that would help keep the state's water clean.

Ted Lange, Northern Plains Resource Council, supported HB 538.

Tape 4, Side A

HOUSE OF REPRESENTATIVES

Natural Resources

ROLL CALL

DATE 2/15/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Dick Knox, Chairman	✓		
Rep. Bill Tash, Vice Chairman, Majority	✓		
Rep. Bob Raney, Vice Chairman, Minority	✓		
Rep. Aubyn Curtiss	✓		
Rep. Jon Ellingson	✓		
Rep. David Ewer	✓		
Rep. Daniel Fuchs	✓		
Rep. Hal Harper	✓		
Rep. Karl Ohs	✓		
Rep. Scott Orr	✓		
Rep. Paul Sliter	✓		
Rep. Robert Story	✓		
Rep. Jay Stovall	✓		
Rep. Emily Swanson	✓		
Rep. Lila Taylor	✓		
Rep. Cliff Trexler	✓		
Rep. Carley Tuss	✓		
Rep. Doug Wagner	✓		

EXHIBIT 4
DATE 2-15-95
HB 521

-D-R-A-F-T-

Amendments to House Bill No. 521
First Reading Copy

Requested by Rep. Wagner
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
February 15, 1995

1. Title, line 4.
Strike: "PROHIBITING"
Insert: "REQUIRING"

2. Title, line 4.
Following: "ADMINISTRATIVE"
Insert: "AND LOCAL"
Strike: "AGENCY"
Insert: "AGENCIES TO JUSTIFY THE ADOPTION OF"

3. Title, line 5.
Strike: "FROM BEING"
Insert: "THAT ARE"

4. Title, line 6.
Strike: second "AND"
Insert: ", "

5. Title, line 7.
Following: "SCIENCES"
Insert: ", AND LOCAL BOARDS OF HEALTH"

6. Title, line 9.
Following: "SECTIONS"
Insert: "50-2-116,"

7. Title, line 10.
Strike: "AND"
Following: "75-10-603,"
Insert: "76-3-501, 76-3-504, 76-4-104, AND 80-15-105,"

8. Page 2, line 1.
Strike: "and to"
Insert: ", "
Following: "sciences"
Insert: ", and local boards of health"

9. Page 6.
Following: line 7
Insert: " NEW SECTION. Section 4. Local standards no more
stringent than state standards. (1) Except as provided in
subsections (2) through (6), unless required by state law,

the local board may not adopt a rule under 50-2-116(1)(i), (2)(k)(iii), or (2)(k)(v) that is more stringent than the corresponding state regulations that address the same circumstances. The local board may incorporate by reference corresponding state regulations.

(2) The local board may adopt a rule to implement 50-2-116(1)(i), (2)(k)(iii), or (2)(k)(v) that is more stringent than corresponding state regulations or adopt rules when there are no corresponding state regulations only if the local board makes a written finding after a public hearing and public comment and based on evidence in the record that the corresponding state regulations are not adequate to protect public health or the environment within the local board's jurisdiction. This finding must be accompanied by a summarizing conclusion statement referring to and evaluating the probability of harm to public health or the environment at the level of the state rule or regulation and the specific improvement in the public health or environment from the stricter local board rule or regulation. The statement must reference information and studies contained in the record that form the basis for the local board's conclusion.

(3) The summarizing conclusion statement must include but is not limited to a discussion of the policy reasons and a risk-cost analysis that supports the local board's decision to impose the standards or requirements and also supports the fact that the local board standard or requirement to be imposed can mitigate the increased probability of harm to the public health or environment and is achievable under current technology, notwithstanding the state government's determination that lesser standards or requirements are appropriate and protective of public health or the environment.

(4) If the local board, upon petition by any person affected by a rule of the local board, identifies rules more stringent than state regulations or identifies rules for which there are no corresponding state regulations, the local board shall review and revise those rules to comply with this section within 9 months of the filing of the petition.

(5) A person who is issued a notice of violation or a denial of a permit or other approval based on a rule that is more stringent than a corresponding state regulation or for which there is no corresponding regulation may assert a partial defense to that notice or a partial challenge to that denial on the basis and to the extent that the rule violates this section because it imposes requirements more stringent than the state regulations, unless the more stringent rule was adopted in compliance with this section.

(6) (a) The local board shall review and propose revisions to its rules to ensure compliance with this section by October 1, 1995. The local board shall

revise its rules to comply with this section by October 1, 1996.

(b) The local board may propose and adopt revisions to its rules prior to the dates specified in subsection (6)(a) upon petition for rulemaking by a person as provided under 2-4-315 and subsection (4) of this section.

Section 5. Section 50-2-116, MCA, is amended to read:
"50-2-116. Powers and duties of local boards. (1)
Local boards shall:

- (a) appoint a local health officer who is a physician or a person with a master's degree in public health or the equivalent and with appropriate experience, as determined by the department, and shall fix his salary;
- (b) elect a chairman and other necessary officers;
- (c) employ necessary qualified staff;
- (d) adopt bylaws to govern meetings;
- (e) hold regular meetings quarterly and hold special meetings as necessary;
- (f) supervise destruction and removal of all sources of filth that cause disease;
- (g) guard against the introduction of communicable disease;
- (h) supervise inspections of public establishments for sanitary conditions;
- (i) subject to the provisions of [section 4], adopt necessary regulations that are no less stringent than state standards for the control and disposal of sewage from private and public buildings that is not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting variances from the minimum requirements that are identical to standards promulgated by the board of health and environmental sciences and must provide for appeal of variance decisions to the department as required by 75-5-305.

(2) Local boards may:

- (a) quarantine persons who have communicable diseases;
- (b) require isolation of persons or things that are infected with communicable diseases;
- (c) furnish treatment for persons who have communicable diseases;
- (d) prohibit the use of places that are infected with communicable diseases;
- (e) require and provide means for disinfecting places that are infected with communicable diseases;
- (f) accept and spend funds received from a federal agency, the state, a school district, or other persons;
- (g) contract with another local board for all or a part of local health services;
- (h) reimburse local health officers for necessary expenses incurred in official duties;

(i) abate nuisances affecting public health and safety or bring action necessary to restrain the violation of public health laws or rules;

(j) adopt necessary fees to administer regulations for the control and disposal of sewage from private and public buildings (fees must be deposited with the county treasurer);

(k) adopt rules that do not conflict with rules adopted by the department:

(i) for the control of communicable diseases;

(ii) for the removal of filth that might cause disease or adversely affect public health;

(iii) subject to the provisions of [section 4], on sanitation in public buildings that affects public health;

(iv) for heating, ventilation, water supply, and waste disposal in public accommodations that might endanger human lives; and

(v) subject to the provisions of [section 4], for the maintenance of sewage treatment systems that do not discharge an effluent directly into state waters and that are not required to have an operating permit as required by rules adopted under 75-5-401."

{Internal References to 50-2-116:

x 37-40-102 x 75-5-305}

Renumber: subsequent sections

10. Page 7, line 15.

Strike: "not"

11. Page 12, line 5.

Strike: "not"

12. Page 17.

Following: line 29

Insert: "Section 16. Section 76-3-501, MCA, is amended to read:

"76-3-501. Local subdivision regulations. (1) Before July 1, 1974, the governing body of every county, city, and town shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for the orderly development of their jurisdictional areas; for the coordination of roads within subdivided land with other roads, both existing and planned; for the dedication of land for roadways and for public utility easements; for the improvement of roads; for the provision of adequate open spaces for travel, light, air, and recreation; for the provision of adequate transportation, water, and drainage, and ; for the regulation of sanitary facilities that is no more stringent than state regulation; for the avoidance or minimization of congestion; and for the avoidance of subdivision which would involve unnecessary environmental degradation and the avoidance of danger of injury to health, safety, or welfare by reason of natural hazard or the lack of water, drainage, access, transportation, or other

public services or would necessitate an excessive expenditure of public funds for the supply of such services.

(2) Review and approval or disapproval of a subdivision under this chapter may occur only under those regulations in effect at the time an application for approval of a preliminary plat or for an extension under 76-3-610 is submitted to the governing body."

{Internal References to 76-3-501:
x 76-3-503}

Section 17. Section 76-3-504, MCA, is amended to read:
"76-3-504. **Minimum requirements for subdivision regulations.** The subdivision regulations adopted under this chapter shall, at a minimum:

(1) require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(2) establish procedures consistent with this chapter for the submission and review of subdivision plats;

(3) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(4) provide for the identification of areas which, because of natural or human-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

(5) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(6) prescribe standards for:

(a) the design and arrangement of lots, streets, and roads;

(b) grading and drainage;

(c) water supply and sewage and solid waste disposal which, at a minimum, meet that are no more stringent than the regulations adopted by the department of health and environmental sciences under 76-4-104;

(d) the location and installation of utilities;

(7) provide procedures for the administration of the park and open-space requirements of this chapter;

(8) provide for the review of preliminary plats by affected public utilities and those agencies of local, state, and federal government having a substantial interest in a proposed subdivision; such utility or agency review may not delay the governing body's action on the plat beyond the time limits specified in this chapter, and the failure of any agency to complete a review of a plat may not be a basis for rejection of the plat by the governing body."

{Internal References to 76-3-504: None.}

Section 18. Section 76-4-104, MCA, is amended to read:

"76-4-104. Rules for administration and enforcement.

(1) The department shall, subject to the provisions of [section 3], adopt reasonable rules, including adoption of sanitary standards, necessary for administration and enforcement of this part.

(2) The rules and standards shall provide the basis for approving subdivision plats for various types of water, sewage facilities, and solid waste disposal, both public and private, and shall be related to size of lots, contour of land, porosity of soil, ground water level, distance from lakes, streams, and wells, type and construction of private water and sewage facilities, and other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

(3) The rules shall provide for the review of the following divisions of land by a local department or board of health, as described in Title 50, chapter 2, part 1, if the local department or board of health employs a registered sanitarian or a registered professional engineer and if the department certifies under subsection (4) that the local department or board is competent to review these divisions of land:

(a) divisions of land containing five or fewer parcels, whenever each parcel will contain individual onsite water and sewage disposal facilities; and

(b) divisions of land proposed to connect to existing municipal water and waste water systems previously approved by the department, if no extension of the systems is required.

(4) The department shall also adopt standards and procedures for certification and maintaining certification to ensure that a local department or board of health is competent to review the divisions of land described in subsection (3).

(5) The department shall review those divisions of land described in subsection (3) if:

(a) a proposed division of land lies within more than one jurisdictional area and the respective governing bodies are in disagreement concerning approval of or conditions to be imposed on the proposed subdivision; or

(b) the local department or board of health elects not to be certified.

(6) The rules shall further provide for:

(a) the furnishing to the reviewing authority of a copy of the plat and other documentation showing the layout or plan of development, including:

(i) total development area;

(ii) total number of proposed dwelling units;

(b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate

supply of water for the type of subdivision proposed;

(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;

(e) standards and technical procedures applicable to storm drainage plans and related designs, in order to insure proper drainage ways;

(f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil percolation testing and required percolation rates and site design standards for on-lot sewage disposal systems when applicable;

(g) standards and technical procedures applicable to water systems;

(h) standards and technical procedures applicable to solid waste disposal;

(i) requiring evidence to establish that, if a public sewage disposal system is proposed, provision has been made for the system and, if other methods of sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations which are in effect at the time of submission of the preliminary or final plan or plat.

(7) If the reviewing authority is a local department or board of health, it shall, upon approval of a division of land under this part, notify the department of the approval and submit to the department a copy of the approval statement.

(8) Review and certification or denial of certification that a division of land is not subject to sanitary restrictions under this part may occur only under those rules in effect at the time plans and specifications are submitted to the department, except in cases where current rules would preclude the use for which the lot was originally intended, the applicable requirements in effect at the time such lot was recorded must be applied. In the absence of specific requirements, minimum standards necessary to protect public health and water quality will apply."

{ Internal References to 76-4-104:

x 76-3-504 x 76-4-102 x 76-4-108 }

Section 19. Section 80-15-105, MCA, is amended to read:

"80-15-105. Rulemaking. (1) The board shall, subject to the provisions of [section 1], adopt rules for the administration of this chapter for which the board and the department of health and environmental sciences have responsibility. These rules must include but are not limited to:

(a) standards and interim numerical standards for agricultural chemicals in ground water as authorized by 80-15-201;

(b) procedures for ground water monitoring as

authorized by 80-15-202 and 80-15-203;

(c) field and laboratory operational quality assurance, quality control, and confirmatory procedures as authorized by 80-15-107, 80-15-202, and 80-15-203, which may include, through adoption by reference, procedures that have been established or approved by EPA for quality assurance and quality control;

(d) standards for maintaining the confidentiality of data and information declared confidential by EPA and the confidentiality of chemical registrant data and information protected from disclosure by federal or state law as required by 80-15-108; and

(e) administrative civil penalties as authorized by 80-15-412.

(2) The department shall adopt rules necessary to carry out its responsibilities under this chapter. These rules must include but are not limited to:

(a) procedures for ground water monitoring as authorized by 80-15-202 and 80-15-203;

(b) the content and procedures for development of agricultural chemical ground water management plans, including the content of best management practices and best management plans, procedures for obtaining comments from the department of health and environmental sciences on the plans, and the adoption of completed plans and plan modifications as authorized by 80-15-211 through 80-15-218;

(c) standards for maintaining the confidentiality of data and information declared confidential by EPA and of chemical registrant data and information protected from disclosure by federal or state law as required by 80-15-108;

(d) field and laboratory operational quality assurance, quality control, and confirmatory procedures as authorized by 80-15-107, 80-15-202, and 80-15-203, which may include, through adoption by reference, procedures that have been established or approved by EPA for quality assurance and quality control;

(e) emergency procedures as authorized by 80-15-405;

(f) procedures for issuance of compliance orders as authorized by 80-15-403; and

(g) procedures for the assessment of administrative civil penalties as authorized by 80-15-412."

{Internal References to 80-15-105: None.}

Renumber: subsequent sections

13. Page 18, lines 2 and 3.

Strike: first "and"

Following: "6"

Strike: ", "

Insert: "; and Title 80, chapter 15,"

14. Page 18, line 6.

Strike: "and"

15. Page 18, twice on line 7

Following: "10"

Strike: ", "

Insert: "; and Title 76, chapter 4, "

Strike: second "and"

16. Page 18, line 8.

Insert: "(4) [Section 4] is intended to be codified as an
integral part of Title 50, chapter 2, and the provisions of
Title 50, chapter 2, apply to [section 4]."

EXHIBIT 5
DATE 2-15-95
HB 521

February 14, 1995

Honorable Doug Wagner
Montana House of Representatives
Capitol Station
Helena, Mt. 59620

Dear Representative Wagner:

I understand the House Natural Resources Committee will be considering legislation (HB 521) to require state agencies to provide an assessment of the risk to public health and an estimate of the compliance costs when proposing rules and regulations more stringent than corresponding federal requirements for delegated programs.

As a member of the Board of Health and Environmental Sciences, I have at times been frustrated by the inability to obtain information of this nature when considering the adoption of rules that have far-reaching implications. I believe it would be extremely useful in helping us better understand the impacts of our decisions so that the regulatory policy we set as a citizen is in the best interest of the environment and the public.

I appreciate this opportunity to share my thoughts with you and wish you well in your deliberations.

Sincerely,



Rem Kohrt
240 Mallard Loop
Whitefish, Mt. 59937

EXHIBIT 6

DATE 2-15-95

HB 521

MontPIRG

Montana Public Interest Research Group

360 Corbin Hall - Missoula, MT - (406) 243-2908

Testimony Against House Bill 521, February 15, 1995

Chairman Knox and members of the House Natural Resources Committee:

For the record, my name is J.V. Bennett, for the Montana Public Interest Research Group, or MontPIRG.

MontPIRG is a non-profit, non-partisan research and advocacy organization working for good government, consumer rights and sound environmental protection. MontPIRG represents over 4000 members in Montana, with 2200 student members students, and is funded with membership donations.

As an advocacy organization advocating good government and sound environmental protection, MontPIRG rises in opposition to House Bill 521.

One troubling aspect of this bill is the issue of Montana's right to impose regulations that are more stringent than federal standards. The people of Montana have decided over the past two decades that the quality of our water, air and land were important enough to enact standards more stringent than those promulgated by the federal government. To disregard the will of Montanans, simply because it has resulted in more stringent regulations, and force us to accept federal regulations undermines our sovereignty as a State.

In addition, this bill would complicate the process by which future Legislatures could exercise their prerogative to enact laws to protect the quality of Montana's environment. Under this bill Legislators could not direct the scientists it employs to develop regulations under a law enacted by the Legislature without triggering a time consuming analysis. In order to enact laws without triggering this process, the Legislature would have to debate each regulation and standard. The pace of the Legislature and the amount of issues confronting Legislators is not conducive to spending the time necessary to develop regulations necessary to implement a law. The reason we employ the scientists we have in the Department of Health and Environmental Sciences and allow them to do the detail work under guidance from the Legislature is it is an efficient use of scarce time and resources.

Another problem with this bill is the time and labor consuming analysis of any

regulation more stringent than the federal standards. Under the provisions of this bill the department would spend the next seven months analyzing regulations. These departments are chronically understaffed and underfunded to be able to fulfill the duties already assigned to them. If given the extra task of regulation analysis, the department's enforcement effectiveness would be drastically impacted.

Moreover, the fiscal note on this bill will be huge given the reallocation of scarce resources necessary to fulfill the bill's objectives. If we are going to spend large amounts of money on environmental protection, it should result in some tangible benefits not just reams of studies on the regulations themselves.

Because this bill is pointlessly expensive, will lead to department paralysis and undermine Montana's sovereignty to protect its land air and water, MontPIRG urges you to table this House Bill 521.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. HB 521
 DATE 2-15-95 SPONSOR(S) Rep. Wagner

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Dexter Busby	Mt. Refugio Co	521		✓
Allen Berkley	Colombia Falls Aluminum Co.	521		✓
Larry Brown	Ag Pres. Assoc	521		✓
Steve Kelly	Friends of the Wild Swan	521	X	
Jim Mockler	Mt. Coal Council			✓
Stan Fresier	MWF		X	
Tamara J. Johnson	MUR.E	521		✓
Don Allen	Mt. Wood Products Assn	521		✓
Stuart Daggett	Mt. Manufactured Housing & RV Assoc.			✓
John Bloomquist	Mt. Stock Growers			✓
Melissa Case	MtNS for a Healthy Future	521	✓	
Steve Turkiewicz	Mt. Auto Dealers Assn	521	✓	✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
 ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. HB 521
 DATE 2-15-95 SPONSOR(S) Rep. Wagner

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Anne Hedges	MEIC	521	X	
Paul Johnson	Montanans For A Healthy Future	521	X	
Deborah Smith	Seneca Club	521	X	
David Owen	MT Chamber			X
GARY LANGLEY	MT. MINING ASSN	521		X
Ted Lange	NPRC	521	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
 ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. HB521
 DATE 2-15-95 SPONSOR(S) Rep. Wagner

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Charles R. Brooks	Blogs Chamber	HB 521		✓
REX MANUEL	CENEX	HB 521		✓
Peggy Trew	WETA	521		✓
Willa Hall	LWV	HB 521	✓	
Janet Ellis	MT Audubon	HB 521	✓	
GAIL ABERCROMBIE	MT Petroleum Assn			✓
Bruce Gilbert	Stillwater Mining Co			✓
Ken Williams	MPC/Entech	HB 521		✓
MIKE MURPHY	MT. WATER RES. ASSN	HB 521		✓
ANDY SKINNER	SELF	521		✓
MARY WESTWOOD	MT. SULPHUR	521	X	
Gloria Paladichuk	Richland Development	521		✓
J.V. Bennett	MontPIRG	521	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chairman Dick Knox, on February 17, 1995, at
8:00 A.M.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Bob Raney, Vice Chairman (Minority) (D)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. David Ewer (D)
Rep. Daniel C. Fuchs (R)
Rep. Hal Harper (D)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Paul Sliter (R)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)
Rep. Douglas T. Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Michael Kakuk, Environmental Quality Council
Alyce Rice, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HJR 25
Executive Action: HB 430 Tabled as amended
HB 473 Do Pass
HJR 22 Do Pass as amended
HB 521 Suspended
HB 538 Tabled
HJR 25 Do Pass

EXECUTIVE ACTION ON HJR 24

Motion: REP. HAL HARPER MOVED DO PASS HJR 24.

Discussion: REP. ROBERT STORY said he was concerned that there wouldn't be enough state-wide interest to get commitment from people to work together regarding common goals on land development in streamside corridors. HB 192 encourages local watershed councils to solve their own problems. If HB 192 passes it can be used to address the issues in HJR 24.

REP. LILA TAYLOR said she is concerned about the word "reasonable" in line 16 of the bill which refers to private property owners' rights to the use of their property.

REP. HARPER said he didn't want to have any words in the resolution that anyone has a problem with.

Motion/Vote: REP. HARPER MOVED TO AMEND HJR 24 BY STRIKING THE WORD "REASONABLE" FROM LINE 16. Question was called. Voice vote was taken. Motion carried unanimously.

Motion: REP. HARPER MOVED HJR DO PASS AS AMENDED.

Discussion: REP. BILL TASH said the groups that are having problems with access, water use, corridors, etc., have the authority now and have exercised it by requesting the Governor's Task Force Groups to act on them. He agreed with REP. STORY that HB 192 will address these issues better because it starts with grassroots groups and works up whereas, HJR 24 starts at the top and works down.

REP. HARPER said there is no way these kinds of issues can be decided at the top and mandated down. HJR 24 tries to raise these issues to the highest state-wide level of awareness.

REP. STORY said he agrees with the concept of HJR 24 but is concerned that another drought committee will come from it.

Vote: Question was called. Voice vote was taken. Motion carried 13-5. REP. TASH, REP. WAGNER, REP. CURTISS, REP. SLITER and REP. ORR voted no.

EXECUTIVE ACTION ON HB 521

Motion: REP. DOUG WAGNER MOVED HB 521 DO PASS.

Motion: REP. WAGNER MOVED DO PASS ON AMENDMENTS TO HB 521.

Discussion: Michael Kakuk, EQC, explained the amendments.

Tape 2, Side B.

REP. HARPER said at least one amendment should be acted on to put the money in the bill then have another hearing since local government interests have been included in the amendments.

Motion/Vote: REP. ROBERT STORY MOVED TO DIVIDE THE AMENDMENTS AND DO PASS ON AMENDMENTS 18, 24 AND 30. Motion carried unanimously.

Discussion: REP. WAGNER asked if the bill could be held in committee for further action at a later date. Mr. Kakuk said his understanding from Legislative Council is that HB 521 is not a revenue bill until it is reported out of committee as such. REP. HARPER said the bill becomes a revenue bill not subject to transmittal as soon as it is on one of the lists that is exchanged between the House and the Senate before transmittal date.

REP. AUBYN CURTISS asked if the title needed to be changed before fees could be collected. Mr. Kakuk said the title would have to be changed before the bill left the committee.

Motion: REP. CURTISS MOVED AN AMENDMENT TO CHANGE THE TITLE OF HB 521 TO INCLUDE THE OPTION OF THE FEE LANGUAGE.

Discussion: REP. HARPER said he didn't have any problem with the amendment but the title will probably end up being amended again. This amendment won't have any impact on whether it is considered a revenue bill or not.

REP. STORY said the section about local government should be included in the title.

Mr. Kakuk said to make sure everybody knows this now applies to local government the movement of amendments 31, 32, 33, 34, 35 and 36 through 39. In order to change the title to include local government it would require the movement of amendments 1 through 10.

REP. HARPER said if REP. CURTISS'S amendment would include 1 through 10 for the title it would serve the committee's purposes.

Mr. Kakuk said by only moving amendments 1 through 10 you would have a title that is inaccurate because the body of the bill doesn't include the local governments. REP. HARPER said that didn't bother him a bit.

Motion/Vote: REP. DANIEL FUCHS MOVED AMENDMENTS 1 THROUGH 10. Question was called. Voice vote was taken. Motion carried unanimously.

REP. CURTISS asked if her amendment had been acted on. CHAIRMAN KNOX said it had been acted on with the vote on amendments 1 through 10.

Motion: REP. WAGNER MOVED THAT THE COMMITTEE SUSPEND FURTHER EXECUTIVE ACTION ON HB 521.

CHAIRMAN KNOX ruled that HB 521 would stay in committee and further executive action would be suspended at this time.

EXECUTIVE ACTION ON HB 538

Motion: REP. HAL HARPER MOVED HB 538 DO PASS.

Discussion: REP. BILL TASH said HB 538 is very strict and would have a very damaging effect on property rights.

Discussion: REP. ROBERT STORY said HB 538 is not a very good bill because it requires the Department of Health and Environmental Sciences to enforce every action and it does not do that. For example, in agricultural and industrial areas the department mitigates to solve the problems. HB 538 doesn't allow the department that latitude.

Motion/Vote: REP. TASH MOVED TO TABLE HB 538. Question was called. Voice vote was taken. Motion carried 12-6. REP. HARPER, REP. CARLEY TUSS, REP. EMILY SWANSON, REP. DAVID EWER, REP. BOB RANEY AND REP. JON ELLINGSON voted no.

HEARING ON HJR 25

Opening Statement by Sponsor: REP. JOE QUILICI, House District 36, Butte, said HJR 25 asks that the continued development and demonstration of innovative technologies for the treatment of mine wastes and other types of cleanup be recognized in Butte, Montana. The Environmental Protection Agency spent \$40,000,000 of the superfund to move contaminated waste from Butte to Opportunity. Contaminated waste should be cleaned up rather than moving it from one site to another. REP. QUILICI asked the committee to support these endeavors.

Tape 3, Side A

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses: REP. AUBYN CURTISS asked REP. QUILICI the name of the entity in Butte that has contributed to waste remediation technology. REP. QUILICI said Metanetix was one of the entities.

REP. EMILY SWANSON said she had been informed that Metanetix had just reached the production stage and shipped its first carload

HOUSE OF REPRESENTATIVES

Natural Resources

ROLL CALL

DATE 2-17-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Dick Knox, Chairman	✓		
Rep. Bill Tash, Vice Chairman, Majority	✓		
Rep. Bob Raney, Vice Chairman, Minority	✓		
Rep. Aubyn Curtiss	✓		
Rep. Jon Ellingson	✓		
Rep. David Ewer	✓		
Rep. Daniel Fuchs	✓		
Rep. Hal Harper	✓		
Rep. Karl Ohs	✓		
Rep. Scott Orr	✓		
Rep. Paul Sliter	✓		
Rep. Robert Story	✓		
Rep. Jay Stovall	✓		
Rep. Emily Swanson	✓		
Rep. Lila Taylor	✓		
Rep. Cliff Trexler	✓		
Rep. Carley Tuss	✓		
Rep. Doug Wagner	✓		

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Rep. Dick Knox, Chairman, on March 13, 1995,
at 3:00 pm.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Bob Raney, Vice Chairman (Minority) (D)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. David Ewer (D)
Rep. Daniel C. Fuchs (R)
Rep. Hal Harper (D)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Paul Sliter (R)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Douglas T. Wagner (R)

Members Excused: Rep. Carley Tuss (D)

Members Absent: None

Staff Present: Michael Kakuk, Environmental Quality Council
Alyce Rice, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 330, SB 331
Executive Action: HB 521 Do Pass As Amended
SB 362 Do Pass As Amended
SB 252 Tabled

Tape 1, Side A

(Note: Testimony and discussion pertaining to both SB 330 and SB
331 can be found in each of the hearings for these two bills.)

livestock operation located in such a manner that all of the waste that accumulates on the surface of that lot is flushed into an adjacent stream every time there is a natural precipitation event, there is a likelihood that pollution could occur. If the department finds that the discharge of that waste into the stream causes pollution and impacts the beneficial use, it would work with the responsible party to devise alternate methods of handling the run off from the feedlot. With the possible exception of the relaxation of the nitrate levels in ground water, SB 331 wouldn't change the threat to agriculture very much.

CHAIRMAN KNOX asked Mr. Pilcher if it could be assumed that existing livestock practices along the streams would be allowed to continue if there has not been any citation or cause for action. Mr. Pilcher said that assumption might be going one step too far. There is no grandfather protection for an operation that has existed for a number of years and has gone unnoticed by the department and found sometime in the future to be causing a water quality problem. The current law doesn't provide that protection and SB 331 doesn't either. Due to limited staff, the department has focused on the livestock operation areas that posed a serious threat to water quality where the impact to beneficial uses could be documented. The department would then work with the party to correct the problem.

Mr. Joscelyn explained the amendments to SB 331 at the request of REP. SWANSON. EXHIBIT 32

Tape 5, Side B

Closing by Sponsor:

SEN. BECK said the amendments to SB 331 may be compatible with Governor Racicot, some of the people in the department and industry, but he was not in total agreement with them. SB 331 will not degrade the waters of Montana. People will still be able to drink out of the streams.

EXECUTIVE ACTION ON HB 521

Motion: REP. DOUG WAGNER MOVED HB 521 DO PASS.

Discussion:

Copies of the Department of Health and Environmental Sciences' (DHES) comments on the fiscal note, discussion draft no. 2 and amendments to HB 521 were provided to the committee. EXHIBITS 33, 34 and 35

REP. WAGNER explained the comments from the department on the fiscal note.

HOUSE NATURAL RESOURCES COMMITTEE

March 13, 1995

Page 15 of 17

Tape 6, Side A

Motion/Vote: REP. WAGNER MOVED THE AMENDMENTS TO HB 521.

Discussion:

REP. KARL OHS asked REP. WAGNER to explain why "local governments" were added into the amendments. REP. WAGNER said local governments were not in the bill originally. The amendments bring them into the bill so when the bill is heard in the Senate they will have the opportunity to participate.

CHAIRMAN KNOX said that rather than re-hear the bill in the House for that inclusion, it was his feeling that the bill would receive a full hearing in the Senate and that portion would be subject to full review.

Vote: Voice vote was taken. Motion on the amendments to HB 521 carried 13 to 5. REP. RANEY, REP. ELLINGSON, REP. HARPER, REP. TUSS AND REP. SWANSON voted no.

Motion/Vote: REP. WAGNER MOVED HB 521 DO PASS AS AMENDED. Voice vote was taken. Motion carried 11 to 7. REP. TAYLOR, REP. RANEY, REP. EWER, REP. TUSS, REP. ELLINGSON, REP. HARPER and REP. SWANSON voted no.

Tape 6, Side B

EXECUTIVE ACTION ON SB 362

Motion: REP. PAUL SLITER MOVED SB 362 BE CONCURRED IN. .

Discussion:

Amendments to SB 362 were provided to the committee and Steve Pilcher, DHES, explained them. EXHIBIT 36

Motion/Vote: REP. SLITER MOVED THE AMENDMENTS TO SB 362. Voice vote was taken. Motion carried unanimously.

Vote: REP. SLITER MOVED SB 362 BE CONCURRED IN AS AMENDED. Voice vote was taken. Motion carried 12 to 6. REP. EWER, REP. TUSS, REP. HARPER, REP. SWANSON, REP. ELLINGSON and REP. RANEY voted no.

EXECUTIVE ACTION ON SB 252

Motion: REP. BILL TASH MOVED SB 252 BE CONCURRED IN.

Discussion:

REP. HAL HARPER said a property owner cannot stop pollution at his own boundary and SB 252 is a bad bill.

HOUSE OF REPRESENTATIVES

Natural Resources

ROLL CALL

DATE 3-13-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Dick Knox, Chairman	✓		
Rep. Bill Tash, Vice Chairman, Majority	✓		
Rep. Bob Raney, Vice Chairman, Minority	✓		
Rep. Aubyn Curtiss	✓		
Rep. Jon Ellingson	✓		
Rep. David Ewer	✓		
Rep. Daniel Fuchs	✓		
Rep. Hal Harper	✓		
Rep. Karl Ohs	✓		
Rep. Scott Orr	✓		
Rep. Paul Sliter	✓		
Rep. Robert Story	✓		
Rep. Jay Stovall	✓		
Rep. Emily Swanson	✓		
Rep. Lila Taylor	✓		
Rep. Cliff Trexler	✓		
Rep. Carley Tuss			✓
Rep. Doug Wagner	✓		



HOUSE STANDING COMMITTEE REPORT

March 14, 1995

Page 1 of 17

Mr. Speaker: We, the committee on Natural Resources report that House Bill 521 (first reading copy -- white) do pass as amended.

Signed: *Dick Knox*
Dick Knox, Chair

And, that such amendments read:

1. Title, line 4.
Strike: "PROHIBITING"
Insert: "REQUIRING"
2. Title, line 4.
Following: "ADMINISTRATIVE"
Strike: "AGENCY"
Insert: "AND LOCAL AGENCIES TO JUSTIFY THE ADOPTION OF"
3. Title, line 5.
Strike: "FROM BEING"
Insert: "THAT ARE"
4. Title, line 6.
Strike: second "AND"
Insert: ", "
5. Title, line 7.
Following: "SCIENCES"
Insert: ", AND LOCAL UNITS OF GOVERNMENT"
6. Title, lines 8 and 9.
Strike: "CREATING" on line 8 through "RULES;" on line 9
7. Title, line 9.
Following: "SECTIONS"

Committee Vote:

Yes 17, No 5.

11 7 ar

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Insert: "50-2-116,"

8. Title, line 10.

Strike: first "AND"

Following: "75-10-603,"

Insert: "76-3-501, 76-3-504, 76-4-104, AND 80-15-105,"

9. Page 2, line 1.

Strike: "and to"

Insert: ", "

Following: "sciences"

Insert: ", and local units of government"

10. Page 2, line 5.

Strike: "statement" through "whether"

Insert: "written finding if"

11. Page 2, line 6.

Following: "by"

Insert: "comparable"

12. Page 2, line 7.

Following: "than"

Insert: "comparable"

Strike: "statement"

Insert: "written finding"

13. Page 2, line 8.

Strike: "a risk-cost"

Insert: "an"

14. Page 2, lines 9 through 16.

Strike: "to impose the" on line 9

Insert: "that the proposed state"

Strike: "and" on line 9 through "is" on line 16

Insert: "protect public health or the environment of the state
and that the state standards or requirements to be imposed
can mitigate harm to the public health or the environment
and are achievable under current technology. The department
is not required to show that the federal regulation is
inadequate to protect public health. The written finding
must also include information from the hearing record
regarding the costs to the regulated community directly
attributable to the proposed state standard or requirement.
[Sections 1 through 3] are"

15. Page 2, line 19.

Following: "2;"

Insert: "Title 75, chapter 3;"

16. Page 2.

Following: line 19

Insert: "[Sections 4 and 5] apply to local units of government when they attempt to regulate the control and disposal of sewage from private and public buildings. [This act] is not intended to apply to the establishment or setting of fees."

17. Page 2, line 23.

Strike: first "standards"

Insert: "regulations"

Strike: second "standards"

Insert: "regulations or guidelines"

Strike: "Except"

Insert: "After [the effective date of this act], except"

18. Page 2, line 24.

Strike: "(6),"

Insert: "(5) and"

19. Page 2, line 25.

Strike: "corresponding"

Insert: "comparable"

Following: "regulations"

Insert: "or guidelines"

20. Page 2, line 26.

Strike: "corresponding"

Insert: "comparable"

Following: "regulations"

Insert: "or guidelines"

21. Page 2, line 27.

Strike: "corresponding"

Insert: "comparable"

22. Page 2, line 28.

Strike: "adopt" through "regulations"

Insert: "guidelines"

23. Page 2, line 30 through page 3, line 26.

Strike: first "the" on page 2, line 30 through "section." on page 3, line 26

Insert: ":(a) the proposed state standard or requirement protects public health or the environment of the state; and
(b) the state standard or requirement to be imposed can mitigate harm to the public health or

environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the board's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule of the board adopted after January 1, 1990, and before [the effective date of this act] that that person believes to be more stringent than comparable federal regulations or guidelines may petition the board to review the rule. If the board determines that the rule is more stringent than comparable federal regulations or guidelines, the board shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The board may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the board for a rule review under subsection (4)(a) if the board adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted board rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1)."

24. Page 3, line 28.

Strike: first "standards"

Insert: "regulations"

Strike: second "standards"

Insert: "regulations or guidelines"

Strike: "Except"

Insert: "After [the effective date of this act], except"

25. Page 3, line 29.

Strike: "(6),"

Insert: "(5) and"

26. Page 3, line 30.

Strike: "corresponding"

Insert: "comparable"
Following: "regulations"
Insert: "or guidelines"

27. Page 4, line 1.
Strike: "corresponding"
Insert: "comparable"

28. Page 4, line 2.
Following: "regulations"
Insert: "or guidelines"

29. Page 4, line 4.
Strike: "corresponding"
Insert: "comparable"
Strike: "adopt" through "regulations"
Insert: "guidelines"

30. Page 4, line 6 through page 5 line 2.
Strike: second "the" on page 4, line 6 through "section." on page 5, line 2

Insert: ": (a) the proposed state standard or requirement protects public health or the environment of the state; and (b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the board's or department's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule of the board or department adopted after January 1, 1990, and before [the effective date of this act] that that person believes to be more stringent than comparable federal regulations or guidelines may petition the board or department to review the rule. If the board or department determines that the rule is more stringent than comparable federal regulations or guidelines, the board or department shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The board or department may charge a petition filing fee in an amount not to exceed \$250.

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(b) A person may also petition the board or department for a rule review under subsection (4)(a) if the board or department adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted board or department rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1)."

31. Page 5, line 4.

Strike: first "standards"

Insert: "regulations"

Strike: second "standards"

Insert: "regulations or guidelines"

Strike: "Except"

Insert: "After [the effective date of this act], except"

32. Page 5, line 5.

Strike: "(6),"

Insert: "(5) and"

33. Page 5, line 6.

Strike: "corresponding"

Insert: "comparable"

Following: "regulations"

Insert: "or guidelines"

34. Page 5, line 7.

Strike: "corresponding"

Insert: "comparable"

Following: "regulations"

Insert: "or guidelines"

35. Page 5, line 9.

Strike: "corresponding"

Insert: "comparable"

Strike: "adopt" through "regulations"

Insert: "guidelines"

36. Page 5, line 11 through page 6, line 7.

Strike: first "the" on page 5, line 11 through "section" on page 6, line 7

Insert: ": (a) the proposed state standard or requirement protects public health or the environment of the state; and

(b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the department's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule of the department adopted after January 1, 1990, and before [the effective date of this act] that that person believes to be more stringent than comparable federal regulations or guidelines may petition the department to review the rule. If the department determines that the rule is more stringent than comparable federal regulations or guidelines, the department shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The department may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the department for a rule review under subsection (4)(a) if the department adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted department rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1) "

37. Page 6.

Following: line 7

Insert: "NEW SECTION. Section 4. Local regulations no more stringent than state regulations or guidelines. (1) After [the effective date of this act], except as provided in subsections (2) through (4) and unless required by state law, the local board may not adopt a rule under 50-2-116(1)(i), (2)(k)(iii), or (2)(k)(v) that is more stringent than the comparable state regulations or guidelines that address the same circumstances. The local board may incorporate by reference comparable state regulations or guidelines.

(2) The local board may adopt a rule to implement 50-2-116(1)(i), (2)(k)(iii), or (2)(k)(v) that is more stringent than comparable state regulations or guidelines only if the local board makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement protects public health or the environment; and

(b) the local board standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the local board's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a rule of the local board adopted after January 1, 1990, and before [the effective date of this act] that that person believes to be more stringent than comparable state regulations or guidelines may petition the local board to review the rule. If the local board determines that the rule is more stringent than comparable state regulations or guidelines, the local board shall comply with this section by either revising the rule to conform to the state regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The local board may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the local board for a rule review under subsection (4)(a) if the local board adopts a rule after January 1, 1990, in an area in which no state regulations or guidelines existed and the state government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted local board rule.

NEW SECTION. Section 5. Local regulations no more stringent than state regulations or guidelines.

(1) After [the effective date of this act], except as provided in subsections (2) through (4) and unless

required by state law, a governing body may not adopt a rule under 76-3-501 or 76-3-504(5)(c) that is more stringent than the comparable state regulations or guidelines that address the same circumstances. The governing body may incorporate by reference comparable state regulations or guidelines.

(2) The governing body may adopt a rule to implement 76-3-501 or 76-3-504(5)(c) that is more stringent than comparable state regulations or guidelines only if the governing body makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement protects public health or the environment; and

(b) the local standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the governing body's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a rule of the governing body adopted after January 1, 1990, and before [the effective date of this act] that that person believes to be more stringent than comparable state regulations or guidelines may petition the governing body to review the rule. If the governing body determines that the rule is more stringent than comparable state regulations or guidelines, the governing body shall comply with this section by either revising the rule to conform to the state regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The governing body may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the governing body for a rule review under subsection (4)(a) if the governing body adopts a rule after January 1, 1990, in an area in which no state regulations or guidelines existed and the state government subsequently establishes comparable regulations or guidelines that

are less stringent than the previously adopted governing body rule.

Section 6. Section 50-2-116, MCA, is amended to read: "50-2-116. Powers and duties of local boards.

(1) Local boards shall:

- (a) appoint a local health officer who is a physician or a person with a master's degree in public health or the equivalent and with appropriate experience, as determined by the department, and shall fix his salary;
- (b) elect a chairman and other necessary officers;
- (c) employ necessary qualified staff;
- (d) adopt bylaws to govern meetings;
- (e) hold regular meetings quarterly and hold special meetings as necessary;
- (f) supervise destruction and removal of all sources of filth that cause disease;
- (g) guard against the introduction of communicable disease;
- (h) supervise inspections of public establishments for sanitary conditions;
- (i) subject to the provisions of [section 4], adopt necessary regulations that are no less stringent than state standards for the control and disposal of sewage from private and public buildings that is not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting variances from the minimum requirements that are identical to standards promulgated by the board of health and environmental sciences and must provide for appeal of variance decisions to the department as required by 75-5-305.

(2) Local boards may:

- (a) quarantine persons who have communicable diseases;
- (b) require isolation of persons or things that are infected with communicable diseases;
- (c) furnish treatment for persons who have communicable diseases;
- (d) prohibit the use of places that are infected with communicable diseases;
- (e) require and provide means for disinfecting places that are infected with communicable diseases;
- (f) accept and spend funds received from a federal agency, the state, a school district, or other persons;
- (g) contract with another local board for all or

a part of local health services;

(h) reimburse local health officers for necessary expenses incurred in official duties;

(i) abate nuisances affecting public health and safety or bring action necessary to restrain the violation of public health laws or rules;

(j) adopt necessary fees to administer regulations for the control and disposal of sewage from private and public buildings (fees must be deposited with the county treasurer);

(k) adopt rules that do not conflict with rules adopted by the department:

(i) for the control of communicable diseases;

(ii) for the removal of filth that might cause disease or adversely affect public health;

(iii) subject to the provisions of [section 4], on sanitation in public buildings that affects public health;

(iv) for heating, ventilation, water supply, and waste disposal in public accommodations that might endanger human lives; and

(v) subject to the provisions of [section 4], for the maintenance of sewage treatment systems that do not discharge an effluent directly into state waters and that are not required to have an operating permit as required by rules adopted under 75-5-401."

Renumber: subsequent sections

38. Page 7, line 14.

Strike: "corresponding"

Insert: "comparable"

39. Page 7, line 15.

Strike: "or" through "exists"

Strike: "not"

40. Page 12, line 4.

Strike: "corresponding"

Insert: "comparable"

41. Page 12, line 5.

Strike: "or" through "exists"

Strike: "not"

42. Page 17, lines 6 through 9.

Strike: subsection (3) in its entirety

43. Page 17.

March 14, 1995

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Following: line 29

Insert: "Section 17. Section 76-3-501, MCA, is amended to read:

"76-3-501. Local subdivision regulations. (1) Before July 1, 1974, the governing body of every county, city, and town shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for the orderly development of their jurisdictional areas; for the coordination of roads within subdivided land with other roads, both existing and planned; for the dedication of land for roadways and for public utility easements; for the improvement of roads; for the provision of adequate open spaces for travel, light, air, and recreation; for the provision of adequate transportation, water, and drainage, ~~and; subject to the provisions of [section 5], for the regulation of~~ sanitary facilities; for the avoidance or minimization of congestion; and for the avoidance of subdivision which would involve unnecessary environmental degradation and the avoidance of danger of injury to health, safety, or welfare by reason of natural hazard or the lack of water, drainage, access, transportation, or other public services or would necessitate an excessive expenditure of public funds for the supply of such services.

(2) Review and approval or disapproval of a subdivision under this chapter may occur only under those regulations in effect at the time an application for approval of a preliminary plat or for an extension under 76-3-610 is submitted to the governing body."

Section 18. Section 76-3-504, MCA, is amended to read:

"76-3-504. Minimum requirements for subdivision regulations. The subdivision regulations adopted under this chapter shall, at a minimum:

(1) require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(2) establish procedures consistent with this chapter for the submission and review of subdivision plats;

(3) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(4) provide for the identification of areas which, because of natural or ~~man-caused~~ human-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction

techniques;

(5) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(6) prescribe standards for:

(a) the design and arrangement of lots, streets, and roads;

(b) grading and drainage;

(c) subject to the provisions of [section 5], water supply and sewage and solid waste disposal which that, at a minimum, meet the regulations adopted by the department of health and environmental sciences under 76-4-104;

(d) the location and installation of utilities;

(7) provide procedures for the administration of the park and open-space requirements of this chapter;

(8) provide for the review of preliminary plats by affected public utilities and those agencies of local, state, and federal government having a substantial interest in a proposed subdivision; such utility or agency review may not delay the governing body's action on the plat beyond the time limits specified in this chapter, and the failure of any agency to complete a review of a plat may not be a basis for rejection of the plat by the governing body."

Section 19. Section 76-4-104, MCA, is amended to read:

"76-4-104. Rules for administration and enforcement. (1) The department shall, subject to the provisions of [section 3], adopt reasonable rules, including adoption of sanitary standards, necessary for administration and enforcement of this part.

(2) The rules and standards shall provide the basis for approving subdivision plats for various types of water, sewage facilities, and solid waste disposal, both public and private, and shall be related to size of lots, contour of land, porosity of soil, ground water level, distance from lakes, streams, and wells, type and construction of private water and sewage facilities, and other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

(3) The rules shall provide for the review of the following divisions of land by a local department or board of health, as described in Title 50, chapter 2,

part 1, if the local department or board of health employs a registered sanitarian or a registered professional engineer and if the department certifies under subsection (4) that the local department or board is competent to review these divisions of land:

(a) divisions of land containing five or fewer parcels, whenever each parcel will contain individual onsite water and sewage disposal facilities; and

(b) divisions of land proposed to connect to existing municipal water and waste water systems previously approved by the department, if no extension of the systems is required.

(4) The department shall also adopt standards and procedures for certification and maintaining certification to ensure that a local department or board of health is competent to review the divisions of land described in subsection (3).

(5) The department shall review those divisions of land described in subsection (3) if:

(a) a proposed division of land lies within more than one jurisdictional area and the respective governing bodies are in disagreement concerning approval of or conditions to be imposed on the proposed subdivision; or

(b) the local department or board of health elects not to be certified.

(6) The rules shall further provide for:

(a) the furnishing to the reviewing authority of a copy of the plat and other documentation showing the layout or plan of development, including:

(i) total development area;

(ii) total number of proposed dwelling units;

(b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;

(e) standards and technical procedures applicable to storm drainage plans and related designs, in order to insure proper drainage ways;

(f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil percolation testing and required percolation rates and site design standards for on-lot sewage disposal

systems when applicable;

(g) standards and technical procedures applicable to water systems;

(h) standards and technical procedures applicable to solid waste disposal;

(i) requiring evidence to establish that, if a public sewage disposal system is proposed, provision has been made for the system and, if other methods of sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations which are in effect at the time of submission of the preliminary or final plan or plat.

(7) If the reviewing authority is a local department or board of health, it shall, upon approval of a division of land under this part, notify the department of the approval and submit to the department a copy of the approval statement.

(8) Review and certification or denial of certification that a division of land is not subject to sanitary restrictions under this part may occur only under those rules in effect at the time plans and specifications are submitted to the department, except in cases where current rules would preclude the use for which the lot was originally intended, the applicable requirements in effect at the time such lot was recorded must be applied. In the absence of specific requirements, minimum standards necessary to protect public health and water quality will apply."

Section 20. Section 80-15-105, MCA, is amended to read:

"80-15-105. Rulemaking. (1) The board shall, subject to the provisions of [section 1], adopt rules for the administration of this chapter for which the board and the department of health and environmental sciences have responsibility. These rules must include but are not limited to:

(a) standards and interim numerical standards for agricultural chemicals in ground water as authorized by 80-15-201;

(b) procedures for ground water monitoring as authorized by 80-15-202 and 80-15-203;

(c) field and laboratory operational quality assurance, quality control, and confirmatory procedures as authorized by 80-15-107, 80-15-202, and 80-15-203, which may include, through adoption by reference, procedures that have been established or approved by EPA for quality assurance and quality control;

(d) standards for maintaining the confidentiality

March 14, 1995

Page 16 of 17

of data and information declared confidential by EPA and the confidentiality of chemical registrant data and information protected from disclosure by federal or state law as required by 80-15-108; and

(e) administrative civil penalties as authorized by 80-15-412.

(2) The department shall adopt rules necessary to carry out its responsibilities under this chapter. These rules must include but are not limited to:

(a) procedures for ground water monitoring as authorized by 80-15-202 and 80-15-203;

(b) the content and procedures for development of agricultural chemical ground water management plans, including the content of best management practices and best management plans, procedures for obtaining comments from the department of health and environmental sciences on the plans, and the adoption of completed plans and plan modifications as authorized by 80-15-211 through 80-15-218;

(c) standards for maintaining the confidentiality of data and information declared confidential by EPA and of chemical registrant data and information protected from disclosure by federal or state law as required by 80-15-108;

(d) field and laboratory operational quality assurance, quality control, and confirmatory procedures as authorized by 80-15-107, 80-15-202, and 80-15-203, which may include, through adoption by reference, procedures that have been established or approved by EPA for quality assurance and quality control;

(e) emergency procedures as authorized by 80-15-405;

(f) procedures for issuance of compliance orders as authorized by 80-15-403; and

(g) procedures for the assessment of administrative civil penalties as authorized by 80-15-412."

Renumber: subsequent sections

44. Page 18, lines 2 and 3.

Strike: first "and"

Following: "6"

Strike: ", "

Insert: "; and Title 80, chapter 15, "

45. Page 18, line 6.

Strike: "and"

46. Page 18, twice on line 7

Following: "10"

Strike: ", "

Insert: "; and Title 76, chapter 4, "

Strike: second "and"

47. Page 18, line 8.

Insert: "(4) [Section 4] is intended to be codified as an integral part of Title 50, chapter 2, and the provisions of Title 50, chapter 2, apply to [section 4].

(5) [Section 5] is intended to be codified as an integral part of Title 76, chapter 3, and the provisions of Title 76, chapter 3, apply to [section 5]."

-END-

3/13/95
1530

Re: Proxy Vote
Natural Resource Committee

I give Hal Harper my proxy vote
for all executive action taken this day

Carolyn Lars

NATURAL RESOURCES
3/13/95

I LEAVE MY PROXY

WITH VICE CHAIR

~~TAKE~~ ON ALL MOTIONS

AND BALLS.

Stacy

Chairman Knox,

I am excusing myself for the purpose of
attending the Health Care Committee.

Hal Harper has my proxy vote for all
executive action taken this day.

Orlley Luss
3-13-95

3-13-95

HOUSE NATURAL RESOURCES
COMMITTEE.

I VOTE ON ALL MATTERS
WITH EMILY SWANSON,

Jim Cooper

DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES
DIRECTOR'S OFFICE

EXHIBIT 3.2
DATE 3-13-95
HBES 521

COGSWELL BUILDING
1400 BROADWAY
PO BOX 200901



STATE OF MONTANA

(406) 444-2544 (OFFICE)
(406) 444-1804 (FAX)

HELENA, MONTANA 59620-0901

March 6, 1995

Representative Doug Wagner
H.D. 93/95
House of Representatives
State Capitol
Helena, Montana 59620

RE: HB 521 - Update to Fiscal Impact Statement

Dear Representative Wagner,

In response to your request to provide an update to the fiscal impact HB 521 will have on the Department of Health and Environmental Sciences (DHES) given the amendments that have been offered and agreed to, the following is provided.

For background purposes, I think that it is safe to re-project fiscal impact on the basis of the following assumptions which, in my judgement, were conceptually agreed to by all parties during last Wednesday's noon hour meeting of your subcommittee:

1. That the amendments prepared by Mr. Kakuk, a copy of which is attached, will be adopted by the full committee.
2. That added to those amendments will be a provision that stipulates that retroactive petitions challenging rules already in effect, can only impact rules promulgated from January 1, 1990 forward to the effective date of this act.
3. That rules that are reviewable under the provisions of this act, prospectively or retrospectively, are those rules where there is a direct comparable set of federal rules or guidelines.
4. That it is not the intent of the bill to force the DHES to justify whether or not federal rules and regulations are sufficient to protect public health. Reasons of protecting public health and the environment are only at issue if the Board or Department promulgates rules more stringent than the federal counterpart.
5. That the intent of the bill is to require either the Board or the Department, when promulgating rules that are more stringent, to produce a formal findings statement that is supported by the documentation required in the

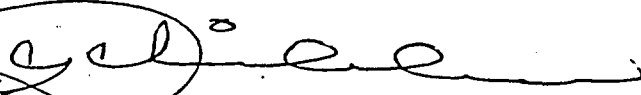
amended version of the bill. The bill does not require the department to engage in costly scientific and economic research other than to justify its actions on the basis of available validated research from other sources.

Given the above, HB 521, as it was conceptually presented last Wednesday, would have a minimal fiscal impact on the department and its resources. However, if the bill changes substantially in its final form and from the assumptions listed above, then the fiscal impact would again have to be reevaluated.

Please keep in mind that this assessment is being provided at your request in order to benefit the work of your subcommittee in completing its assignment to resolve many of the complex problematic issues contained in the bill. A formal fiscal impact statement would normally come through the budget office for their review and subsequent approval. Once the bill is formally amended and passed out in a second reading version, then a formal impact statement can be produced through the budget office.

I trust that this information is sufficient for your needs at this time. If you have need for additional information or assistance, please do not hesitate to request such through my office.

Sincerely,



Robert J. Robinson
Director

Department of Health and Environmental Sciences

Encl:

cc: Dave Lewis, OBPP
Michael Kakuk, EQC

1 **DISCUSSION DRAFT -- 2**

2 HOUSE BILL NO. 521

3 INTRODUCED BY
4
5
6

7 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING REQUIRING CERTAIN
8 STATE ADMINISTRATIVE AND LOCAL AGENCY AGENCIES TO JUSTIFY THE ADOPTION
9 OF RULES FROM BEING THAT ARE MORE STRINGENT THAN CORRESPONDING
10 COMPARABLE FEDERAL REGULATIONS OR GUIDELINES; REQUIRING THE BOARD OF
11 HEALTH AND ENVIRONMENTAL SCIENCES AND THE DEPARTMENT OF HEALTH AND
12 ENVIRONMENTAL SCIENCES, AND LOCAL UNITS OF GOVERNMENT TO REVIEW AND
13 REVISE CERTAIN RULES TO ENSURE COMPLIANCE WITH THIS ACT; ~~CREATING AN~~
14 ~~AFFIRMATIVE DEFENSE FOR VIOLATIONS OF CERTAIN RULES MORE STRINGENT~~
15 ~~THAN CORRESPONDING FEDERAL RULES~~; AMENDING SECTIONS 50-2-116,
16 75-2-111, 75-2-301, 75-2-503, 75-3-201, 75-5-201, 75-5-311, 75-6-103,
17 75-10-204, 75-10-405, AND 75-10-603, 76-3-501, 76-3-504, 76-4-107, AND
18 80-15-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
19

20 WHEREAS, the federal government frequently regulates areas that
21 are also subject to state regulation; and

22 WHEREAS, differing state and federal policy goals and unique
23 state prerogatives frequently result in different levels of
24 regulation, different standards, and different requirements being
25 imposed by state and federal programs covering the same subject
26 matter; and

27 WHEREAS, Montana must simultaneously move toward reducing
28 redundant and unnecessary regulation that dulls the state's
29 competitive advantage while being ever vigilant in the protection of
30 the public's health, safety, and welfare; and

31 WHEREAS, Montana's administrative agencies should consider

1 applicable federal standards when adopting, readopting, or amending
2 rules with analogous federal counterparts; and

3 WHEREAS, Montana's administrative agencies should analyze whether
4 analogous federal standards sufficiently protect the health, safety,
5 and welfare of Montana's citizens; and

6 WHEREAS, as part of the formal rulemaking process, the public
7 should be advised of the agencies' conclusions about whether
8 comparable federal regulations or guidelines sufficiently protect the
9 health, safety, and welfare of Montana citizens.

10 11 STATEMENT OF INTENT

12 A statement of intent is required for this bill in order to
13 provide guidance to the board of health and environmental sciences and
14 to the department of health and environmental sciences, AND TO LOCAL
15 UNITS OF GOVERNMENT in complying with [this act].

16 The legislature intends that in addition to all requirements
17 imposed by existing law and rules, the board or the department include
18 as part of the initial publication and all subsequent publications of
19 a rule a ~~statement as to whether~~ WRITTEN FINDING IF the rule in
20 question contains any ~~standards~~ REGULATIONS or ~~requirements~~ GUIDELINES
21 that exceed the ~~standards~~ REGULATIONS or ~~requirements~~ GUIDELINES
22 imposed by COMPARABLE federal law.

23 If the rules are more stringent than COMPARABLE federal law, the
24 ~~statement~~ WRITTEN FINDING must include but is not limited to a
25 discussion of the policy reasons and a ~~risk-cost~~ AN analysis that
26 supports the board's or department's decision ~~to impose the~~ THAT THE
27 PROPOSED STATE standards ~~or requirements and also supports the fact~~
28 ~~that the state standards or requirements to be imposed are achievable~~
29 ~~under current technology, notwithstanding the federal government's~~
30 ~~determination that lesser standards or requirements are appropriate.~~

31 ~~The risk-cost analysis must address the probability of harm to~~

~~public health or the environment under the conditions imposed by the federal standards, the reduction in that probability of harm because of imposition of stricter state standards, and the costs required of the regulated community to mitigate the harm to public health or the environment via the stricter state standards.~~

~~{This act} is~~ PROTECT PUBLIC HEALTH OR THE ENVIRONMENT OF THE STATE AND THAT THE STATE STANDARD OR REQUIREMENT TO BE IMPOSED CAN MITIGATE HARM TO THE PUBLIC HEALTH OR ENVIRONMENT AND IS ACHIEVABLE UNDER CURRENT TECHNOLOGY. THE DEPARTMENT IS NOT REQUIRED TO SHOW THAT THE FEDERAL REGULATION IS INADEQUATE TO PROTECT PUBLIC HEALTH. THE WRITTEN FINDING MUST ALSO INCLUDE INFORMATION FROM THE HEARING RECORD REGARDING THE COSTS TO THE REGULATED COMMUNITY DIRECTLY ATTRIBUTABLE TO THE PROPOSED STATE STANDARD.

[SECTIONS 1 THROUGH 3] ARE intended to apply to any rule that is adopted, readopted, or amended under the authority of or in order to implement, comply with, or participate in any program established under federal law or under a state statute that incorporates or refers to federal law, federal standards, or federal requirements under Title 75, chapter 2; TITLE 75, CHAPTER 3, Title 75, chapter 5; Title 75, chapter 6; or Title 75, chapter 10. [SECTIONS 4 AND 5] APPLY TO LOCAL UNITS OF GOVERNMENT WHEN THEY ATTEMPT TO REGULATE THE CONTROL AND DISPOSAL OF SEWAGE FROM PRIVATE AND PUBLIC BUILDINGS. [THIS ACT] IS NOT INTENDED TO APPLY TO THE ESTABLISHMENT OR SETTING OF FEES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. State ~~standards~~ REGULATIONS no more stringent than federal ~~standards~~ REGULATIONS OR GUIDELINES. (1) Except as provided in subsections (2) through ~~(6)~~ (5), unless required by state law, the board may not adopt a rule to implement this chapter that is more stringent than the ~~corresponding~~ COMPARABLE federal

1 regulations OR GUIDELINES that address the same circumstances. The
2 board may incorporate by reference ~~corresponding~~ COMPARABLE federal
3 regulations OR GUIDELINES.

4 (2) The board may adopt a rule to implement this chapter that
5 is more stringent than ~~corresponding~~ COMPARABLE federal regulations
6 or GUIDELINES ~~adopt rules when there are no corresponding federal~~
7 ~~regulations only if the board makes a written finding after a public~~
8 ~~hearing and public comment and based on evidence in the record that~~
9 ~~the corresponding federal regulations are not adequate to protect~~
10 ~~public health or the environment of the state. This finding must be~~
11 ~~accompanied by a summarizing conclusion statement referring to and~~
12 ~~evaluating the probability of harm to public health or the environment~~
13 ~~at the level of the federal rule or regulation and the specific~~
14 ~~improvement in the public health or environment from the stricter~~
15 ~~state rule. The statement must reference information and studies~~
16 ~~contained in the record that form the basis for the board's~~
17 ~~conclusion.~~

18 ~~(3) The summarizing conclusion statement must include but is not~~
19 ~~limited to a discussion of the policy reasons and a risk cost analysis~~
20 ~~that supports the board's decision to impose the standards or~~
21 ~~requirements and also supports the fact that the state standard or~~
22 ~~requirement to be imposed can mitigate the increased probability of~~
23 ~~harm to the public health or environment and is achievable under~~
24 ~~current technology, notwithstanding the federal government's~~
25 ~~determination that lesser standards or requirements are appropriate~~
26 ~~and protective of public health or the environment.~~

27 ~~(4) If the board, upon petition by any person affected by a rule~~
28 ~~of the board, identifies rules more stringent than federal regulations~~
29 ~~or identifies rules for which there are no corresponding federal~~
30 ~~regulations, the board shall review and revise those rules to comply~~
31 ~~with this section within 9 months of the filing of the petition.~~

~~(5) a person who is issued a notice of violation or a denial of a permit or other approval based on a rule that is more stringent than a corresponding federal regulation or for which there is no corresponding regulation may assert a partial defense to that notice or a partial challenge to that denial on the basis and to the extent that the rule violates this section because it imposes requirements more stringent than the federal regulations, unless the more stringent rule was adopted in compliance with this section.~~

~~(6) (a) The board shall review and propose revisions to its rules to ensure compliance with this section by October 1, 1995. The board shall revise its rules to comply with this section by October 1, 1996.~~

~~(b) The board may propose and adopt revisions to its rules prior to the dates specified in subsection (6)(a) upon petition for rulemaking by a person as provided under 2-4-315 and subsection (4) of this section. :~~

(A) THE PROPOSED STATE STANDARD PROTECTS PUBLIC HEALTH OR THE ENVIRONMENT OF THE STATE; AND

(B) THAT THE STATE STANDARD OR REQUIREMENT TO BE IMPOSED CAN MITIGATE HARM TO THE PUBLIC HEALTH OR ENVIRONMENT AND IS ACHIEVABLE UNDER CURRENT TECHNOLOGY.

(3) THE WRITTEN FINDING MUST REFERENCE INFORMATION AND ANY PEER REVIEWED SCIENTIFIC STUDY CONTAINED IN THE RECORD THAT FORMS THE BASIS FOR THE BOARD'S CONCLUSION. THE WRITTEN FINDING MUST ALSO INCLUDE INFORMATION FROM THE HEARING RECORD REGARDING THE COSTS TO THE REGULATED COMMUNITY DIRECTLY ATTRIBUTABLE TO THE PROPOSED STATE STANDARD.

(4) (A) A PERSON AFFECTED BY A RULE OF THE BOARD ADOPTED AFTER JANUARY 1, 1990 AND BEFORE [THE EFFECTIVE DATE OF THIS ACT] THAT THAT PERSON BELIEVES TO BE MORE STRINGENT THAN COMPARABLE FEDERAL REGULATIONS OR GUIDELINES MAY PETITION THE BOARD TO REVIEW THE RULE.

1 IF THE BOARD DETERMINES THAT THE RULE IS MORE STRINGENT THAN
 2 COMPARABLE FEDERAL REGULATIONS OR GUIDELINES, THE BOARD SHALL COMPLY
 3 WITH THIS SECTION BY EITHER REVISING THE RULE TO CONFORM TO THE
 4 FEDERAL REGULATION OR GUIDELINE OR BY MAKING THE WRITTEN FINDING AS
 5 PROVIDED UNDER SUBSECTION (2) WITHIN A REASONABLE PERIOD OF TIME NOT
 6 TO EXCEED 12 MONTHS AFTER RECEIVING THE PETITION. A PETITION UNDER
 7 THIS SECTION DOES NOT RELIEVE THE PETITIONER OF THE DUTY TO COMPLY
 8 WITH THE CHALLENGED RULE. THE BOARD MAY CHARGE A PETITION FILING FEE
 9 IN AN AMOUNT NOT TO EXCEED \$250.

10 (B) A PERSON MAY ALSO PETITION THE BOARD FOR A RULE REVIEW UNDER
 11 SUBSECTION (4)(A) IF THE BOARD ADOPTS A RULE AFTER JANUARY 1, 1990
 12 WHERE NO FEDERAL REGULATION OR GUIDELINE EXISTED AND THE FEDERAL
 13 GOVERNMENT SUBSEQUENTLY ESTABLISHES A COMPARABLE REGULATION OR
 14 GUIDELINE THAT IS LESS STRINGENT THAN THE PREVIOUSLY ADOPTED BOARD
 15 RULE.

16 (5) THIS SECTION DOES NOT APPLY TO A RULE ADOPTED UNDER THE
 17 EMERGENCY RULEMAKING PROVISIONS OF 2-4-303(1).

18
 19 NEW SECTION. Section 2. State standards REGULATIONS no more
 20 stringent than federal standards REGULATIONS OR GUIDELINES. (1)
 21 Except as provided in subsections (2) through (6) (5), unless required
 22 by state law, the board OR DEPARTMENT may not adopt a rule to
 23 implement this chapter that is more stringent than the corresponding
 24 COMPARABLE federal regulations OR GUIDELINES that address the same
 25 circumstances. The board OR DEPARTMENT may incorporate by reference
 26 corresponding COMPARABLE federal regulations OR GUIDELINES.

27 (2) The board OR DEPARTMENT may adopt a rule to implement this
 28 chapter that is more stringent than corresponding COMPARABLE federal
 29 regulations or GUIDELINES adopt rules when there are no corresponding
 30 federal regulations only if the board OR DEPARTMENT makes a written
 31 finding after a public hearing and public comment and based on

1 evidence in the record that the corresponding federal regulations are
2 not adequate to protect public health or the environment of the state.
3 This finding must be accompanied by a summarizing conclusion statement
4 referring to and evaluating the probability of harm to public health
5 or the environment at the level of the federal rule or regulation and
6 the specific improvement in the public health or environment from the
7 stricter state rule. The statement must reference information and
8 studies contained in the record that form the basis for the board's
9 conclusion.

10 (3) The summarizing conclusion statement must include but is not
11 limited to a discussion of the policy reasons and a risk cost analysis
12 that supports the board's decision to impose the standards or
13 requirements and also supports the fact that the state standard or
14 requirement to be imposed can mitigate the increased probability of
15 harm to the public health or environment and is achievable under
16 current technology, notwithstanding the federal government's
17 determination that lesser standards or requirements are appropriate
18 and protective of public health or the environment.

19 (4) If the board, upon petition by any person affected by a rule
20 of the board, identifies rules more stringent than federal regulations
21 or identifies rules for which there are no corresponding federal
22 regulations, the board shall review and revise those rules to comply
23 with this section within 9 months of the filing of the petition.

24 (5) a person who is issued a notice of violation or a denial of
25 a permit or other approval based on a rule that is more stringent than
26 a corresponding federal regulation or for which there is no
27 corresponding regulation may assert a partial defense to that notice
28 or a partial challenge to that denial on the basis and to the extent
29 that the rule violates this section because it imposes requirements
30 more stringent than the federal regulations, unless the more stringent
31 rule was adopted in compliance with this section.

~~(6) (a) The board shall review and propose revisions to its rules to ensure compliance with this section by October 1, 1995. The board shall revise its rules to comply with this section by October 1, 1996.~~

~~(b) The board may propose and adopt revisions to its rules prior to the dates specified in subsection (6)(a) upon petition for rulemaking by a person as provided under 2-4-315 and subsection (4) of this section. ;~~

(A) THE PROPOSED STATE STANDARD PROTECTS PUBLIC HEALTH OR THE ENVIRONMENT OF THE STATE; AND

(B) THAT THE STATE STANDARD OR REQUIREMENT TO BE IMPOSED CAN MITIGATE HARM TO THE PUBLIC HEALTH OR ENVIRONMENT AND IS ACHIEVABLE UNDER CURRENT TECHNOLOGY.

(3) THE WRITTEN FINDING MUST REFERENCE INFORMATION AND ANY PEER REVIEWED SCIENTIFIC STUDY CONTAINED IN THE RECORD THAT FORMS THE BASIS FOR THE BOARD'S OR DEPARTMENT'S CONCLUSION. THE WRITTEN FINDING MUST ALSO INCLUDE INFORMATION FROM THE HEARING RECORD REGARDING THE COSTS TO THE REGULATED COMMUNITY DIRECTLY ATTRIBUTABLE TO THE PROPOSED STATE STANDARD.

(4) (A) A PERSON AFFECTED BY A RULE OF THE BOARD OR DEPARTMENT ADOPTED AFTER JANUARY 1, 1990 AND BEFORE [THE EFFECTIVE DATE OF THIS ACT] THAT THAT PERSON BELIEVES TO BE MORE STRINGENT THAN COMPARABLE FEDERAL REGULATIONS OR GUIDELINES MAY PETITION THE BOARD OR DEPARTMENT TO REVIEW THE RULE. IF THE BOARD OR DEPARTMENT DETERMINES THAT THE RULE IS MORE STRINGENT THAN COMPARABLE FEDERAL REGULATIONS OR GUIDELINES, THE BOARD OR DEPARTMENT SHALL COMPLY WITH THIS SECTION BY EITHER REVISING THE RULE TO CONFORM TO THE FEDERAL REGULATION OR GUIDELINE OR BY MAKING THE WRITTEN FINDING AS PROVIDED UNDER SUBSECTION (2) WITHIN A REASONABLE PERIOD OF TIME NOT TO EXCEED 12 MONTHS AFTER RECEIVING THE PETITION. A PETITION UNDER THIS SECTION DOES NOT RELIEVE THE PETITIONER OF THE DUTY TO COMPLY WITH THE

1 CHALLENGED RULE. THE BOARD OR DEPARTMENT MAY CHARGE A PETITION FILING
 2 FEE IN AN AMOUNT NOT TO EXCEED \$250.

3 (B) A PERSON MAY ALSO PETITION THE BOARD OR DEPARTMENT FOR A
 4 RULE REVIEW UNDER SUBSECTION (4)(A) IF THE BOARD OR DEPARTMENT ADOPTS
 5 A RULE AFTER JANUARY 1, 1990 WHERE NO FEDERAL REGULATION OR GUIDELINE
 6 EXISTED AND THE FEDERAL GOVERNMENT SUBSEQUENTLY ESTABLISHES A
 7 COMPARABLE REGULATION OR GUIDELINE THAT IS LESS STRINGENT THAN THE
 8 PREVIOUSLY ADOPTED BOARD OR DEPARTMENT RULE.

9 (5) THIS SECTION DOES NOT APPLY TO A RULE ADOPTED UNDER THE
 10 EMERGENCY RULEMAKING PROVISIONS OF 2-4-303(1).

11
 12 NEW SECTION. Section 3. State standards REGULATIONS no more
 13 stringent than federal standards REGULATIONS OR GUIDELINES. (1)
 14 Except as provided in subsections (2) through (6) (5), unless required
 15 by state law, the department may not adopt a rule to implement this
 16 chapter that is more stringent than the corresponding COMPARABLE
 17 federal regulations OR GUIDELINES that address the same circumstances.
 18 The department may incorporate by reference corresponding COMPARABLE
 19 federal regulations OR GUIDELINES.

20 (2) The department may adopt a rule to implement this chapter
 21 that is more stringent than corresponding COMPARABLE federal
 22 regulations or GUIDELINES adopt rules when there are no corresponding
 23 federal regulations only if the department makes a written finding
 24 after a public hearing and public comment and based on evidence in the
 25 record that the corresponding federal regulations are not adequate to
 26 protect public health or the environment of the state. This finding
 27 must be accompanied by a summarizing conclusion statement referring
 28 to and evaluating the probability of harm to public health or the
 29 environment at the level of the federal rule or regulation and the
 30 specific improvement in the public health or environment from the
 31 stricter state rule. The statement must reference information and

1 ~~studies contained in the record that form the basis for the board's~~
2 ~~conclusion.~~

3 ~~(3) The summarizing conclusion statement must include but is not~~
4 ~~limited to a discussion of the policy reasons and a risk cost analysis~~
5 ~~that supports the board's decision to impose the standards or~~
6 ~~requirements and also supports the fact that the state standard or~~
7 ~~requirement to be imposed can mitigate the increased probability of~~
8 ~~harm to the public health or environment and is achievable under~~
9 ~~current technology, notwithstanding the federal government's~~
10 ~~determination that lesser standards or requirements are appropriate~~
11 ~~and protective of public health or the environment.~~

12 ~~(4) If the board, upon petition by any person affected by a rule~~
13 ~~of the board, identifies rules more stringent than federal regulations~~
14 ~~or identifies rules for which there are no corresponding federal~~
15 ~~regulations, the board shall review and revise those rules to comply~~
16 ~~with this section within 9 months of the filing of the petition.~~

17 ~~(5) a person who is issued a notice of violation or a denial of~~
18 ~~a permit or other approval based on a rule that is more stringent than~~
19 ~~a corresponding federal regulation or for which there is no~~
20 ~~corresponding regulation may assert a partial defense to that notice~~
21 ~~or a partial challenge to that denial on the basis and to the extent~~
22 ~~that the rule violates this section because it imposes requirements~~
23 ~~more stringent than the federal regulations, unless the more stringent~~
24 ~~rule was adopted in compliance with this section.~~

25 ~~(6) (a) The board shall review and propose revisions to its~~
26 ~~rules to ensure compliance with this section by October 1, 1995. The~~
27 ~~board shall revise its rules to comply with this section by October~~
28 ~~1, 1996.~~

29 ~~(b) The board may propose and adopt revisions to its rules prior~~
30 ~~to the dates specified in subsection (6)(a) upon petition for~~
31 ~~rulemaking by a person as provided under 2-4-315 and subsection (4)~~

1 ~~of this section.~~ :

2 (A) THE PROPOSED STATE STANDARD PROTECTS PUBLIC HEALTH OR THE
3 ENVIRONMENT OF THE STATE; AND

4 (B) THAT THE STATE STANDARD OR REQUIREMENT TO BE IMPOSED CAN
5 MITIGATE HARM TO THE PUBLIC HEALTH OR ENVIRONMENT AND IS ACHIEVABLE
6 UNDER CURRENT TECHNOLOGY.

7 (3) THE WRITTEN FINDING MUST REFERENCE INFORMATION AND ANY PEER
8 REVIEWED SCIENTIFIC STUDY CONTAINED IN THE RECORD THAT FORMS THE BASIS
9 FOR THE DEPARTMENT'S CONCLUSION. THE WRITTEN FINDING MUST ALSO
10 INCLUDE INFORMATION FROM THE HEARING RECORD REGARDING THE COSTS TO THE
11 REGULATED COMMUNITY DIRECTLY ATTRIBUTABLE TO THE PROPOSED STATE
12 STANDARD.

13 (4) (A) A PERSON AFFECTED BY A RULE OF THE DEPARTMENT ADOPTED
14 AFTER JANUARY 1, 1990 AND BEFORE [THE EFFECTIVE DATE OF THIS ACT] THAT
15 THAT PERSON BELIEVES TO BE MORE STRINGENT THAN COMPARABLE FEDERAL
16 REGULATIONS OR GUIDELINES MAY PETITION DEPARTMENT TO REVIEW THE RULE.
17 IF THE DEPARTMENT DETERMINES THAT THE RULE IS MORE STRINGENT THAN
18 COMPARABLE FEDERAL REGULATIONS OR GUIDELINES, THE DEPARTMENT SHALL
19 COMPLY WITH THIS SECTION BY EITHER REVISING THE RULE TO CONFORM TO THE
20 FEDERAL REGULATION OR GUIDELINE OR BY MAKING THE WRITTEN FINDING AS
21 PROVIDED UNDER SUBSECTION (2) WITHIN A REASONABLE PERIOD OF TIME NOT
22 TO EXCEED 12 MONTHS AFTER RECEIVING THE PETITION. A PETITION UNDER
23 THIS SECTION DOES NOT RELIEVE THE PETITIONER OF THE DUTY TO COMPLY
24 WITH THE CHALLENGED RULE. THE DEPARTMENT MAY CHARGE A PETITION FILING
25 FEE IN AN AMOUNT NOT TO EXCEED \$250.

26 (B) A PERSON MAY ALSO PETITION THE DEPARTMENT FOR A RULE REVIEW
27 UNDER SUBSECTION (4) (A) IF THE DEPARTMENT ADOPTS AFTER JANUARY 1, 1990
28 A RULE WHERE NO FEDERAL REGULATION OR GUIDELINE EXISTED AND THE
29 FEDERAL GOVERNMENT SUBSEQUENTLY ESTABLISHES A COMPARABLE REGULATION
30 OR GUIDELINE THAT IS LESS STRINGENT THAN THE PREVIOUSLY ADOPTED
31 DEPARTMENT RULE.

1 (5) THIS SECTION DOES NOT APPLY TO A RULE ADOPTED UNDER THE
2 EMERGENCY RULEMAKING PROVISIONS OF 2-4-303(1).

3
4 NEW SECTION. Section 4. Local regulations no more stringent
5 than state regulations or guidelines. (1) After [the effective date
6 of this act], except as provided in subsections (2) through (4) and
7 unless required by state law, the local board may not adopt a rule
8 under 50-2-116(1)(i), (2)(k)(iii), or (2)(k)(v) that is more stringent
9 than the comparable state regulations or guidelines that address the
10 same circumstances. The local board may incorporate by reference
11 comparable state regulations or guidelines.

12 (2) The local board may adopt a rule to implement 50-2-
13 116(1)(i), (2)(k)(iii), or (2)(k)(v) that is more stringent than
14 comparable state regulations or guidelines only if the local board
15 makes a written finding after a public hearing and public comment and
16 based on evidence in the record that:

17 (a) the proposed local standard protects public health or the
18 environment; and

19 (b) that the local board standard or requirement to be imposed
20 can mitigate harm to the public health or environment and is
21 achievable under current technology.

22 (3) The written finding must reference information and any peer
23 reviewed scientific study contained in the record that forms the basis
24 for the local board's conclusion. The written finding must also
25 include information from the hearing record regarding the costs to the
26 regulated community directly attributable to the proposed local
27 standard.

28 (4) (a) A person affected by a rule of the local board adopted
29 after January 1, 1990 and before [the effective date of this act] that
30 that person believes to be more stringent than comparable state
31 regulations or guidelines may petition the local board to review the